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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 Cr. 0093 (VEC)

5 SHELDON SILVER,

6 Defendant.

7 -----x

8 November 4, 2015

9 9:35 a.m.

10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge
and a Jury

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 BY: CARRIE H. COHEN,

16 ANDREW D. GOLDSTEIN,

HOWARD S. MASTER,

17 JAMES M. McDONALD,

Assistant United States Attorneys

18 STROOCK & STROOCK & LAVAN LP

Attorneys for Defendant

19 BY: JOEL COHEN

20 - and -

MOLOLAMKEN, LLP

21 BY: STEVEN F. MOLO

JUSTIN SHUR

22 JUSTIN ELLIS

ROBERT KRY

23 TUONGVY LE

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(Trial resumed; jury not present)

THE COURT: Okay, ladies and gentlemen. I have a note from juror no. 4, we will mark it Court Exhibit 1. It says: Employer stated that because I'm the only person in this position, my absence from four to six weeks can have a bad impact on the company. Is there possibility of being excused for this case? They are willing to provide a written statement.

Juror no. 4 is Raquel Morel, according to her note, last name Morel, M-O-R-E-L. If the parties want to think about it, why don't we proceed today and think about it and tell her we will get back to her.

MS. COHEN: We can talk about it at lunch?

THE COURT: Tell her she will sit for the day and we will deal with this later in the day.

Are they ready?

THE DEPUTY CLERK: Yes.

THE COURT: Bring them out.

THE DEPUTY CLERK: Do you want the witness on the stand?

THE COURT: Oh yes, where is the witness.

MS. COHEN: One moment, your Honor.

(Continued on next page)

FB45sill

Weitz - direct

1 (Jury present)

2 THE COURT: Good morning, everybody.

3 THE JURY: Good morning.

4 THE COURT: Ladies and gentlemen we took the extra
5 chairs out of the jury box so you have a little extra room.

6 A JUROR: Yes, more room.

7 THE COURT: Ms. Cohen?

8 MS. COHEN: Thank you, your Honor.

9 THE COURT: Mr. Weitz, you are still under oath.

10 THE WITNESS: Yes, your Honor.

11 PERRY WEITZ, resumed.

12 DIRECT EXAMINATION

13 BY MS. COHEN:

14 Q. Mr. Weitz, you testified yesterday about firm lunches where
15 mesothelioma and other firm matters were discussed. Do you
16 recall that testimony?

17 A. I do.

18 Q. How often did Sheldon Silver attend those lunches?

19 A. When he wasn't in Albany and he was in New York City, all
20 the time.

21 Q. What do you recall Sheldon Silver saying at any of those
22 lunches about the state funding of mesothelioma research?

23 A. He never discussed that.

24 Q. What do you recall Sheldon Silver saying at either at one
25 of those lunches or directly to you about possible state

FB45sill

Weitz - direct

1 funding that was available for mesothelioma research?

2 A. There weren't any discussions about that.

3 Q. What did Sheldon Silver tell you about any opportunities
4 for you or your firm to support mesothelioma research?

5 A. We didn't have any conversations about our funding for
6 mesothelioma research with Shelly.

7 Q. Did Sheldon Silver ever tell that you he was giving state
8 money to Dr. Taub's research?

9 A. No.

10 Q. You testified yesterday that you hired Sheldon Silver
11 because he was a powerful person as Speaker of the New York
12 State Assembly. Do you recall that testimony?

13 A. I do.

14 Q. When you hired Sheldon Silver, what expectation did you
15 have that Sheldon Silver would use his official position to
16 bring business to the firm?

17 A. I didn't.

18 Q. What did you know about whether Sheldon Silver used his
19 official position to get the referrals from Dr. Taub to your
20 firm?

21 A. I know nothing about that.

22 Q. What discussions did you have with Sheldon Silver about
23 real estate tax work?

24 A. I never had any conversation about any real estate tax
25 work.

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Weitz - cross

1 Q. Have you ever heard of Jay Goldberg?

2 A. No.

3 Q. Have you ever heard of the law firm --

4 A. I should say I have heard about him now, not prior to this
5 case.

6 Q. Prior to this case have you ever heard of the law firm
7 Goldberg & Iryami?

8 A. No.

9 Q. What do you know about any money Sheldon Silver got by
10 referring clients to Jay Goldberg or his law firm
11 Goldberg & Iryami?

12 A. I don't know anything about that.

13 MS. COHEN: No further questions, your Honor.

14 THE COURT: Mr. Cohen?

15 MR. COHEN: Thank you, your Honor.

16 CROSS EXAMINATION

17 BY MR. COHEN:

18 Q. Mr. Weitz, I'm Joel Cohen, and together with my colleagues
19 I represent Mr. Silver. And, of course, you know Mr. Silver,
20 correct?

21 A. I do.

22 Q. Now, you told us yesterday, Mr. Weitz, that when you were
23 starting your law firm you were outraged by the fact that
24 corporations were abandoning the people who had been afflicted
25 with mesothelioma as a result of them putting mesothelioma or

FB45sill

Weitz - cross

1 asbestos into those buildings, or creating the wherewithal that
2 there would be asbestos problems, correct?

3 A. That is correct.

4 Q. And you, having been outraged by that, were inspired to be
5 the guy to create the firm to look out for the little guy
6 because other firms weren't willing to tackle those
7 corporations and you built your firm on that model inspired by
8 what had happened, correct?

9 A. That is correct.

10 Q. And you wanted to build that firm, you started by yourself
11 before you joined up with Mr. Luxenberg; is that correct?

12 A. That's correct.

13 Q. And you built up that firm on the model to accomplish that
14 for those little guys --

15 A. Absolutely.

16 Q. -- to handle cases of personal injury whether they were
17 personal injuries involving accidents, construction accidents,
18 whether they were personal injuries resulting from malpractice
19 or doctors screwed up in cases, or personal injuries resulting
20 from exposure to asbestos, correct?

21 A. That's correct.

22 Q. And those were also all personal injury cases, correct?

23 A. Yes.

24 Q. Now, having done that, you wanted to create the expertise
25 in your firm particularly with respect to mesothelioma,

FB45sill1

Weitz - cross

1 correct?

2 A. Well, all asbestos-related diseases.

3 Q. Okay, and having done that you brought lawyers into your
4 firm. First, you joined up with Mr. Luxenberg; is that
5 correct?

6 A. Well, he left with me even, you know, before we formed
7 Weitz & Luxenberg.

8 Q. And then the firm became Weitz & Luxenberg, ultimately?

9 A. Yes. Shortly thereafter.

10 Q. And how many lawyers, by say 2002, did you put together in
11 that boutique firm?

12 A. I would say at that time probably about 50 lawyers.

13 Q. About 50 lawyers.

14 And that group of 50 lawyers, was it not the largest
15 group concentrating in handling mesothelioma cases, correct?

16 A. Yes.

17 Q. And in a short period of time, up through, say, 2002, you
18 had made significant cases for plaintiffs against defendants in
19 mesothelioma cases, correct?

20 A. Yes.

21 Q. And, in fact, by 2002 your website would report that you
22 had accomplished a lawsuit against asbestos defendants to the
23 tune of \$64.5 million, correct?

24 A. I don't remember what the website said in 2002.

25 Q. But how about that case?

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Weitz - cross

1 A. That there was a verdict of \$64 million?

2 Q. Yes.

3 A. Yes.

4 Q. Do you remember who the defendants in that case were?

5 A. No.

6 Q. But that was brought by your law firm?

7 A. Yeah. I mean we've had, you know, hundreds of verdicts
8 like -- not hundreds but over a hundred verdicts for, you know,
9 for eight-figure numbers so there have been a lot of verdicts
10 over the last 25 years involving \$10 million-plus verdicts.

11 Q. And basically the mesothelioma community, so to speak, knew
12 that your firm was the firm that was accomplishing those great
13 verdicts or settlements on behalf of plaintiffs in mesothelioma
14 cases?

15 A. We tried the most cases and we got the highest verdicts.

16 Q. And if one were to create a pie chart of the amount of work
17 in mesothelioma that you were doing in your firm as opposed to
18 all the other law firms, say, in New York, you would have been
19 accomplishing roughly more than 75 percent of all of the work
20 in that field?

21 A. Well, depending on the given time. We had a very large
22 percentage of all of the asbestos cases on the docket in New
23 York City and to this day we still do.

24 Q. And anybody who was paying attention would recognize that
25 your law firm were the go-to guys in the field of mesothelioma

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Weitz - cross

1 plaintiff's work, correct?

2 A. Well, I would hope so. All I could state are the facts.

3 We were -- our success rate was extraordinarily high, beyond 95
4 percent in winning our cases and our settlement and our verdict
5 values, the values the juries returned, were much higher than
6 most and our settlement values were some of the highest in the
7 country.

8 Q. And you recognized, did you not, from your work in the
9 field, that basically mesothelioma was a killer disease,
10 correct?

11 A. Incurable and a hundred percent fatal.

12 Q. And by the time that a person was diagnosed with
13 mesothelioma he would probably have a life span of maybe two
14 years, correct?

15 A. On average.

16 Q. And it would be a horrible circumstance for those last two
17 years?

18 A. It's the worst type of death that somebody can suffer from.

19 Q. And it was your goal, in bringing these lawsuits, if you
20 couldn't accomplish curing the disease obviously or extending
21 life, that at least you would be able to get some kind of
22 compensation for the plaintiffs in the case, or their families?

23 A. I'm sorry. Could you read back that question, please?

24 THE COURT: Yes, rephrase that question. I don't
25 think he was involved in curing mesothelioma.

FB45sill1

Weitz - cross

1 BY MR. COHEN:

2 Q. Obviously; but recognizing that there was no cure for it at
3 the time, you thought you would be able to give some semblance
4 of compensation to the plaintiffs in the case, or to their
5 surviving families?

6 A. Well, I live with these people trying the cases. One case
7 that I tried I tried for 38 families and lived with them for a
8 year and a half and not only are, you know, is the actual
9 person that is sick affected by the disease but their wife,
10 their children, their grandchildren, the entire family, and the
11 economics involved for not only, you know, the sick person and
12 his wife or her husband and their children but their
13 grandchildren and future generations are affected by it.

14 Q. And in terms of building the model of your firm, as you
15 testified yesterday, it was somewhat different than other firms
16 in the personal injury field. You weren't making partners of
17 new lawyers or other lawyers who were coming into the firm,
18 correct?

19 A. Correct.

20 Q. But you were giving them an entrepreneurial experience by
21 which they would participate in the cases in the recoveries
22 that the Weitz & Luxenberg firm received, correct?

23 A. Yes. The entire model of the personal injury structure for
24 almost every firm that I know of is to encourage the lawyers at
25 your firm to try to get cases.

FB45sill1

Weitz - cross

1 Q. And with respect to those cases, if a case were to come in,
2 for example -- by the way, the structure on contingency cases
3 is such that the lawyers who brought the case would receive one
4 third of the total recovery of the plaintiffs in the case,
5 correct?

6 A. Any lawyer that was admitted and working for the firm and a
7 member in good standing of the bar whether they were a lawyer
8 for, you know, a week or a lawyer for 40 years, would be
9 entitled to get a referral fee if they brought in the case.

10 Q. But basically the whole contingency process with respect to
11 which Weitz & Luxenberg firm would receive one third of the
12 recovery of the plaintiffs, that's not unique to
13 Weitz & Luxenberg, that's the case with respect to all personal
14 injury firms in New York, correct?

15 A. Yes. The fees fluctuate between a third and 40 percent.

16 Q. And with respect to asbestos cases, though, you were
17 charging one third of the recovery, correct?

18 A. In New York you charge one third of recovery.

19 Q. And the reason that seems like a lot of money, a lot of
20 percentage, but you would do that because you were taking a
21 risk with the plaintiffs in the case so that in the event that
22 there was not a recovery or at the end of the day there was
23 nobody who you could collect from or your client could collect
24 from, that you were out of luck, that you would not get a dime
25 notwithstanding all the work that you had put into the case?

FB45sill1

Weitz - cross

1 A. And we would lose money because we paid for all of the
2 investigation and the expenses of the case.

3 Q. And that system of a one-third contingency fee is not
4 unique to Weitz & Luxenberg, correct?

5 A. Not at all.

6 Q. And not only that, it is endorsed by the Courts, the Courts
7 in their rules with respect to contingency allow for one third
8 of the recovery, correct?

9 A. Well, the reason that there is contingency fee is so that
10 the indigent person or a person that doesn't have the means to
11 pay for a lawyer for an hourly fee and have to come up with
12 money every month would have an opportunity to bring his case
13 to court and fight some large corporation who has a lot of
14 money and can pay the lawyers a lot of money to defend them.
15 Somebody who doesn't have any money couldn't pay for a lawyer
16 if they had a great case. So, the contingency fee was created
17 so that they could come to somebody like my firm and not have
18 to pay any money and we would get paid only after we recovered
19 money for them.

20 Q. So, supposing somebody was a lawyer totally unaffiliated
21 with your firm and he practiced state law, or criminal law, or
22 real estate law, or some other area of law, but he knew clients
23 or potential clients because he knew some doctor in a hospital
24 or something like that, and he could bring the case to your
25 firm but couldn't handle it himself or herself because they

FB45sill

Weitz - cross

1 don't have the expertise in the case, what kind of an
2 arrangement would you make with those outside lawyers
3 unaffiliated with your firm?

4 MS. COHEN: Objection, your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Could you read that back to me?

7 MR. COHEN: Pardon me. Shall I rephrase it?

8 THE COURT: Just rephrase it.

9 THE WITNESS: Okay.

10 BY MR. COHEN:

11 Q. Some lawyer totally unaffiliated with your firm refers a
12 case to your firm because you have the expertise.

13 A. An asbestos case?

14 Q. Asbestos case or negligence case.

15 A. Okay.

16 Q. What would be the transaction or financial arrangement that
17 you would have with that outside lawyer?

18 A. That lawyer would also receive a third of the fee, referral
19 fee.

20 Q. Even if he had nothing to do with the case other than
21 handing it off to you, correct?

22 A. Well, different referring attorneys -- we have a lot of
23 different referring attorneys that don't work at our firm that
24 are outside referring attorneys and they do all different
25 things. Some of them will sign up the case, some of them will

FB45sill

Weitz - cross

1 maintain a relationship with the client. Some of them will
2 order medical records, some of them don't do anything but have
3 joint responsibility on the case and are held accountable for
4 the case.

5 Q. But for the most part, in this latter category, all they're
6 doing is basically handing over the case to you guys who are
7 the experts, correct?

8 A. It differs. There is a wide variety of things that are
9 done or not done by a referring attorney.

10 Q. And you would give that particular lawyer in that last
11 category one third of the recovery that you received?

12 A. That's correct.

13 THE COURT: I want you to rephrase that question. I'm
14 not sure what you are referring to by "that last category."

15 BY MR. COHEN:

16 Q. The last lawyers that do nothing other than hand the case
17 off, those lawyers would also receive one third of what
18 Weitz & Luxenberg received at the end of the day, right?

19 A. That's correct.

20 Q. And supposing some outside lawyer actually knew a doctor
21 who referred cases to him, okay, and that guy couldn't handle
22 the case, he refers it to Weitz & Luxenberg, same thing, you
23 would continue to give him one third of every recovery that the
24 Weitz & Luxenberg firm received in a case, correct?

25 A. That's correct.

FB45sill

Weitz - cross

1 Q. So, taking the example that you used the other day --
2 yesterday -- of, say, the client receives the recovery of \$1
3 million, so after expenses your firm would receive one third of
4 a million, roughly \$330,000, the client would receive \$666,000,
5 correct?

6 A. Correct.

7 Q. And basically the referring lawyer would get one third of
8 what Weitz & Luxenberg got, correct?

9 A. Approximately \$110,000 in that scenario that you just said.

10 Q. Would the client, in any way, be harmed financially by that
11 \$110,000 that you were giving to the outside lawyer?

12 A. No. The client's retainer, and it is usually a joint
13 retainer with the referring attorney on it, says you will get
14 one third of the gross amount of the settlement minus expenses
15 and that the referring attorney would get one third of our
16 third so they're never impacted by what the referring attorney
17 gets the client.

18 Q. And the deal that you structured with the lawyers in your
19 firm, none of whom are partners except Mr. Luxenberg and one
20 gentleman you said had a minimal percentage?

21 A. Right.

22 Q. The deal that you had with them is the same and that is
23 that if somebody in your firm brought in a case and there is a
24 recovery of a million dollars, he or she would receive
25 basically \$110,000 of that recovery, correct?

FB45sill

Weitz - cross

1 A. Correct.

2 Q. And that would be the case whether that particular lawyer
3 who brought in the case worked on the case at all or was in a
4 different department of your firm, correct?

5 A. Correct. Most of the time the lawyer bringing in the case
6 doesn't necessarily work on the case.

7 Q. So he might work or she might work on a negligence case or
8 on a malpractice case, doesn't do mesothelioma work, brings in
9 the case, hands it off to more capable people in that area and
10 receives \$110,000 at the end of the day if there is a recovery
11 of a million dollars?

12 A. That's correct. It would go to that department that
13 specializes and are experts in that area and those are the
14 litigators that would handle that case.

15 Q. And it wouldn't matter, would it, whether that particular
16 lawyer who brought in the case is a seasoned lawyer in his 50s
17 or 60s or whether he was a 25-year-old just out of law school
18 who maybe couldn't find his way to the court house without a
19 map, that person would get \$110,000, too, for that case?

20 A. Well, there are some young lawyers in our office who make
21 multiples of their salary by bringing in a case.

22 Q. Now, based on what you had said before about the tremendous
23 verdicts that you received, the marriage between you and
24 Mr. Luxenberg that you spoke of yesterday seemed to have worked
25 well for you and your clients, correct?

FB45sill1

Weitz - cross

1 A. It has.

2 Q. Now, the government is intending to prove that Mr. Silver
3 received more than \$3 million as a result of cases referred to
4 your law firm, ultimately, and we will talk about Mr. Silver in
5 a moment. That would mean \$10 million to your law firm and
6 roughly, give or take, \$20 million in recoveries to the clients
7 that Mr. Silver had a hand in bringing into your law firm,
8 correct?

9 A. Correct.

10 Q. What does that represent in terms of the total -- and
11 that's over a period of 10 or 12 years, correct?

12 A. Correct.

13 Q. What does that represent in terms of the overall
14 accomplishment of your firm in seeking recoveries for clients
15 of your firm?

16 A. Mr. Silver's referrals, to the best of my recollection over
17 the 12 years that he was with us, were -- in the asbestos cases
18 were, on average, I think three or four cases a year and our
19 firm, during some years, brought in thousands of cases of
20 asbestos cases, not to mention pharmaceutical cases and
21 environmental cases. But, you know, as far as the total firm
22 is concerned, we brought in thousands of cases every year and
23 Mr. Silver's asbestos referrals were three or four cases a
24 year.

25 Q. Now, you talked about -- we have talked about so far that

FB45sill1

Weitz - cross

1 the asbestos cases that Mr. Silver had a hand in bringing into
2 your firm, he also brought in negligence cases as well,
3 correct?

4 A. Yes.

5 Q. Now, returning to the period of time when you testified
6 that Mr. Luxenberg presented the idea of bringing Mr. Silver
7 into the firm, you thought it would add to, I think you used
8 the word, brand of your law firm, correct?

9 A. Prestige and brand.

10 Q. Prestige of your firm because he is a significant political
11 figure and in fact knows a lot of people, correct?

12 A. Very well respected, was a very well respected man in the
13 legal community and, you know, I can't speak for outside the
14 legal community but, you know, was known as a very powerful man
15 in the state and everybody within the legal community that I
16 knew had liked him.

17 Q. And you thought bringing him into the firm after talking to
18 Mr. Luxenberg would add, as you said, to the prestige of your
19 law firm, correct?

20 A. Correct.

21 Q. It is not uncommon, is it, for law firms to bring in
22 prestigious people in the law firm to accomplish helping their
23 brand, helping their prestige; is that correct?

24 A. Not at all. People from government or retired judges are
25 hired all the time by law firms for exactly the same reason.

FB45sill1

Weitz - cross

1 Q. And they're not particularly expecting those people to do
2 work on the cases and go into court and do depositions and read
3 over briefs and stuff like that, correct?

4 A. Well, I think sometimes they are and sometimes they aren't.

5 Q. But it is not particularly unique that you were not
6 expecting Mr. Silver to actually get his fingers dirty with
7 actually doing the hard work that experts in mesothelioma do?

8 A. No. We knew that Mr. Silver was not going to be litigating
9 the cases that we handled. We --

10 Q. But -- I'm sorry.

11 A. We handle complex cases that take years of training for
12 people to become -- for these lawyers to become experts in and
13 we had no expectation of that.

14 Q. But, if he was able to bring in cases that would be gravy,
15 correct?

16 A. Right. Absolutely.

17 Q. And that's what happened?

18 A. That's right.

19 Q. Now, I take it, Mr. Weitz, that you weren't involved in any
20 of the day-to-day of Mr. Silver bringing in cases into the
21 firm, correct? You wouldn't know how that happened, correct?

22 A. No.

23 Q. Did you come to know that he was receiving the case
24 recommendations from Dr. Taub at Columbia Presbyterian?

25 A. There was a time when I found that out, yes.

FB45sill

Weitz - cross

1 Q. And did you know who Dr. Taub was?

2 A. I had heard of Dr. Taub, yes.

3 Q. What had you heard of him?

4 A. You know, I had heard that he was a mesothelioma doctor at
5 Columbia.

6 Q. And, in fact, from time to time your firm, you came to
7 learn, used him as an expert in cases?

8 A. No. I never used Dr. Taub as an expert so I couldn't
9 really tell you that. I know what I knew was that he had
10 recommended some patients to a young lawyer in our office that
11 had worked with him.

12 Q. So, with respect to recommendations, if a doctor recommends
13 a law firm such as yours to a patient of his or hers and he
14 might give one name, maybe your firm and another firm, whose
15 decision, ultimately, is it for the patient to then become a
16 client, say, of your law firm?

17 A. It is always the patient's decision.

18 Q. So, what happens? Is there an intake process?

19 A. Well, usually what happens is -- and it is an interesting
20 process but, you know, a lot of times the adult children of
21 these people will get involved because I would say the average
22 age of these mesothelioma victims are in their mid to late 60s
23 and so their children are usually adults at that point and they
24 get involved and they -- they'll Google us and they'll find
25 research and they'll make sure that they're going to the best

FB45sill

Weitz - cross

1 place.

2 Q. And in many cases, obviously, they come to your law firm?

3 A. Well, I would hope they would come to us for that reason.

4 Q. Now, obviously Dr. Taub, it will be established at the
5 trial, referred cases to Mr. Silver and then, in turn, to your
6 law firm, correct?

7 A. Correct.

8 Q. Is that unique that a doctor, particularly somebody in the
9 mesothelioma field, would refer his or her patients to a law
10 firm?

11 A. No.

12 Q. Well, what is the experience at Weitz & Luxenberg? There
13 is a member of your firm, say Michael Roberts, I'm told, has
14 many doctors, does he not, that he has relationships with and
15 they refer cases to Mr. Roberts?

16 A. Correct.

17 Q. Are there other lawyers in your law firm who have those
18 relationships with doctors who refer cases to your law firm?

19 A. Yes, and it is not only with respect to asbestos cases, it
20 is with respect to all personal injury cases. You know, the
21 doctor sees somebody that is injured in a car accident and
22 they're very badly injured and if, you know, they know of a
23 very good lawyer they might recommend them. But, it is up to
24 the client, the patient to decide whether or not they want
25 it -- the patient might know somebody.

FB45sill1

Weitz - cross

1 Q. And if the doctor is looking out for his patient he may
2 take it upon himself it say, hey, you might want to consider a
3 law firm, you might have a lawsuit here and maybe you want to
4 go to Weitz & Luxenberg or another law firm but in this
5 particular case the Weitz & Luxenberg firm, correct?

6 A. Well, believe it or not, when I first started doing this in
7 the '80s a lot of people didn't know that mesothelioma was
8 caused only by asbestos. A lot of people that got lung cancer
9 or these other diseases thought that their cancer was caused by
10 something else and not asbestos. And the doctors tell them
11 that it was caused by asbestos and, you know, and then they
12 don't know what to do and so doctors sometimes will recommend
13 one or two or three law firms for them to go see and they do
14 sometimes go to one of those law firms or they know somebody
15 themselves or they do their own due diligence afterwards and
16 find their own firm.

17 Q. And doctors steeped in this field would likely know that
18 there was potential for this lawsuit in this area on behalf
19 of -- as a result of the personal injury suffered from
20 mesothelioma, correct?

21 A. Absolutely.

22 Q. When you engage a client or a client engages your law firm,
23 rather, what happens is you enter into, for lack of a better
24 word, a contract with the client in terms of the representation
25 and in terms of what the legal fees and breakdown and all of

FB45sill

Weitz - cross

1 that is, correct?

2 A. Correct.

3 Q. If I can -- your Honor, did you say you wanted a hard copy?

4 THE COURT: Yes, please.

5 MR. COHEN: If we can put up Exhibit 2, please?

6 THE COURT: Just on our screens, right? Just on our
7 screen, Mr. Cohen?

8 MR. COHEN: Yes, please.

9 THE COURT: The document is not in evidence.

10 BY MR. COHEN:

11 Q. Do you see that document, Mr. Weitz?

12 A. I do.

13 Q. Could you identify what that is?

14 A. It is a retainer agreement. It is a contract of
15 representation between the law firm of Weitz & Luxenberg and a
16 potential client.

17 Q. So this is basically a prototype, a form agreement that you
18 use. It has no names on it, it is not a particular patient,
19 correct?

20 A. That's correct.

21 Q. Is that a contract that has been used by your law firm in
22 mesothelioma cases?

23 A. I mean, I would have to read it and it is pretty lengthy
24 and it is updated all the time to stay abreast of all of the
25 guidelines and then rules of the State but it looks like it

FB45sill

Weitz - cross

1 would be one that we have used.

2 Q. If you look at the lower right-hand column it has the
3 number WL000827?

4 A. Uh-huh.

5 Q. A document produced by the Weitz & Luxenberg firm?

6 A. I see that, yes.

7 Q. This is a contract from your law firm?

8 A. At some time this was -- I mean, without reading every word
9 this would be -- this would seem like the contract that we
10 would have used, yes.

11 MR. COHEN: Your Honor, I will offer it into evidence.

12 MS. COHEN: No objection, your Honor.

13 THE COURT: Defendant's Exhibit 2 is received.

14 (Defendant's Exhibit 2 received in evidence)

15 BY MR. COHEN:

16 Q. Recognizing that this is a form and not a particular
17 client's, would you read the first paragraph after it says
18 Contract of Representation? Out loud, please?

19 THE COURT: I'm sorry, what do you want him to read?

20 MR. COHEN: Starting I/we.

21 A. I/we, blank, residing at, blank, hereby retain
22 Weitz & Luxenberg, P.C., at 700 Broadway, New York, New York,
23 10003 as my/our attorney, to prosecute a cause of action or
24 claims for personal injuries and/or wrongful death as a result
25 of injuries sustained from exposure to asbestos related

FB45sill

Weitz - cross

1 materials.

2 Q. So, armed with the caveat you mentioned before, this is a
3 contract of representation at some point during the course of
4 the last number of years for particularly asbestos-related
5 injury, correct?

6 A. Correct.

7 Q. And you refer to that as a cause of action or a claim for
8 personal injuries and/or wrongful death, correct?

9 A. Yes.

10 Q. You can put this aside. Thank you.

11 Now, needless to say, your law firm doesn't handle tax
12 certiorari work or anything like that, correct?

13 A. No. Never have.

14 Q. Your firm has no expertise in that area.

15 By the way, how many lawyers do you have roughly now?

16 A. Approximately a hundred. It fluctuates between, you
17 know -- it could fluctuate between 90 and a hundred-plus.

18 Q. Did you have a written agreement with Mr. Silver
19 concerning, you testified, that he was receiving, I believe,
20 \$120,000 a year as a base salary? Do you have a written
21 agreement with him?

22 A. I don't believe so.

23 Q. Was there anything in your understanding with Mr. Silver
24 that would preclude him, in the event that he had a case having
25 nothing whatsoever to do with personal injury, mesothelioma,

FB45sill

Weitz - cross

1 malpractice or accidents, any term of personal injury, to refer
2 a case to another law firm that handled something?

3 A. Nothing would have prohibited him from doing that.

4 Q. Now, Ms. Cohen asked you some questions about whether you
5 had conversations with Mr. Silver in which you talked about
6 grants to Columbia University or New York Presbyterian
7 Hospital, correct?

8 A. Correct.

9 Q. And I think you testified that you didn't have
10 conversations with him --

11 A. That's correct.

12 Q. -- about that.

13 Mr. Silver is not a particularly talkative person in
14 terms of what he does, is that correct?

15 A. No. We didn't have many conversations about what he did in
16 Albany.

17 Q. So, if he was involved in DNA legislation or death penalty
18 legislation -- if that even happens anymore -- or real estate
19 legislation or anything, he wouldn't be talking to you about
20 what he is doing in Albany in terms of any of those things,
21 correct?

22 MS. COHEN: Objection, your Honor.

23 THE COURT: Sustained.

24 Q. Well, would he talk to you about the kind of things that
25 were coming up before the legislature?

FB45sill

Weitz - cross

1 A. No.

2 Q. Or things that were coming up before him in his capacity as
3 a legislator?

4 A. We didn't talk about things that were going on in the
5 legislature.

6 MR. COHEN: Would you give me a moment, your Honor?

7 THE COURT: Sure.

8 (Pause)

9 Q. So, Mr. Weitz, I think you testified yesterday about
10 contributions that your law firm has made. Over the course of
11 time you have made -- your firm has made contributions with
12 respect to, I think it is Massachusetts General Hospital?

13 A. Dr. Poznansky and his team have done some very good
14 research which we have been committed to involving mesothelioma
15 since, I believe, 2011 or '12.

16 Q. And did you not make a grant also to the, is it Brigham and
17 Women's Hospital?

18 A. Brigham and Women's University; Dr. Sugarbaker created a
19 program there very similar to the Ronald McDonald house with
20 North Shore Hospital and LIJ that is for family that come for
21 mesothelioma treatment because they have to be there for
22 extended period of times. So, this particular facility that we
23 donate to takes care of the families while their loved one is
24 being treated at Brigham and Women's for mesothelioma.

25 Q. Do you remember how much that was?

FB45sill1

Weitz - redirect

1 A. I think the last one was \$150,000.

2 MR. COHEN: I have no further questions, your Honor.

3 THE COURT: Okay.

4 Ms. Cohen?

5 REDIRECT EXAMINATION

6 BY MS. COHEN:

7 Q. You testified earlier on cross-examination about the
8 settlements of mesothelioma cases that were in the high
9 millions. Do you recall that testimony?

10 A. Yes.

11 Q. Did you discuss those settlements and verdicts at the
12 lunches you talked about that Sheldon Silver attended?

13 A. Yes.

14 Q. So Sheldon Silver would have been aware of how valuable the
15 mesothelioma cases were to your firm?

16 A. Absolutely.

17 Q. And you also testified on cross-examination that the
18 asbestos cases referred to your firm by Sheldon Silver were a
19 small percentage of the overall number of cases that your firm
20 handled in a given year?

21 A. That's correct.

22 Q. But those cases that were referred to Sheldon Silver, the
23 asbestos cases by Dr. Taub, they ended up netting Sheldon
24 Silver a significant amount of money; is that right?

25 A. He would receive one third of whatever the recovery was and

FB45sill1

Weitz - redirect

1 based upon what I have read, because I didn't add it up before
2 that, it was, I think, somewhere around \$3 million.

3 Q. And you said that it is not uncommon for firms to hire, for
4 example, retired judges to bring prestige to their firm. Do
5 you recall that testimony on cross?

6 A. Yes.

7 Q. And when a firm hires a retired judge, they're no longer in
8 government service, right?

9 A. That's correct.

10 Q. And so, the retired judge, when they're at that firm, for
11 example, doesn't use their official position to bring in
12 business to that firm, that's correct?

13 A. Correct.

14 Q. And you testified on cross about an attorney at your firm,
15 Michael Roberts --

16 A. Yes.

17 Q. -- who knows a doctor who sometimes refers asbestos cases
18 to him at the firm. Do you recall that testimony?

19 A. Yes.

20 Q. What money did Michael Roberts give to the doctor who
21 referred patients to him at your firm in exchange for those
22 referrals?

23 A. He doesn't give them any money.

24 Q. What access to State money did Michael Roberts have to give
25 to the doctor who refers him asbestos cases at your firm?

FB45sill

Weitz - redirect

1 A. He has no access to State money.

2 Q. You testified on cross that Sheldon Silver didn't discuss
3 things in Albany with you that often. Do you recall that?

4 A. Yes.

5 Q. How important was it to you that Sheldon Silver not use his
6 official position to bring in business to your firm?

7 MR. COHEN: Objection, your Honor.

8 THE COURT: Yes, rephrase that.

9 MS. COHEN: Sure, your Honor.

10 BY MS. COHEN:

11 Q. How important was it to you that Sheldon Silver did not use
12 his public position in connection with your firm?

13 MR. COHEN: Objection, your Honor.

14 THE COURT: I think that's the same question.

15 Did you care whether he used his official position to
16 bring business to your firm?

17 THE WITNESS: It never -- it never occurred so I never
18 was faced with that situation.

19 BY MS. COHEN:

20 Q. Mr. Weitz, did your firm take any precautions with respect
21 to representing the State of New York after Sheldon Silver
22 joined the firm?

23 A. Yes, we did. We wanted to avoid conflicts of interest.

24 Q. And why did you want to avoid that by not taking cases
25 related to the State of New York after Sheldon Silver joined

FB45sill

Weitz - redirect

1 the firm?

2 A. Because we didn't want any appearance of impropriety even
3 though there might not have been, but the media was always, you
4 know -- Weitz & Luxenberg was always a prominent firm in New
5 York City and Shelly was always in the newspapers for one thing
6 or another and we didn't want to have any appearance of
7 impropriety.

8 Q. And you testified on cross-examination about the donations
9 your firm has made to Mass General in the past couple years.

10 Do you recall that?

11 A. Yes.

12 Q. What referrals of patients has the firm received from
13 doctors at Mass General after the firm began donating to Mass
14 General?

15 A. We haven't received any.

16 Q. Why not?

17 A. They haven't sent one yet.

18 Q. What about referrals of -- you testified, sorry, on
19 cross-examination, about money the firm has given to Brigham
20 and Women's hospital?

21 A. Yes.

22 Q. What referrals of mesothelioma cases has the firm received
23 from doctors at Brigham and Women's hospital?

24 A. None.

25 Q. And you talked about a Dr. Sugarbaker; what referrals of

FB45sill1

Weitz - redirect

1 cases has the firm gotten from Dr. Sugarbaker after you started
2 funding?

3 A. To the best of my knowledge, none.

4 MS. COHEN: A moment, your Honor -- oh, I'm sorry.

5 Q. Looking again, can we pull up Defendant's Exhibit 2? If
6 you have it in front of you Mr. Weitz if you can turn to the
7 third page, it is the third paragraph.

8 Mr. Coccaro -- the defense can pull it up?

9 MR. COHEN: Yes, can we pull up Exhibit 2, please?

10 MS. COHEN: Highlight the third paragraph, please.

11 THE COURT: Page 3 or the third paragraph?

12 MS. COHEN: The third paragraph on page 3.

13 BY MS. COHEN:

14 Q. Can we please highlight the third page, third paragraph,
15 please? Thank you.

16 Mr. Weitz, if you can read that third paragraph and
17 explain to the jury what it is and why it is in your standard
18 retainer agreement?

19 A. An attorney may divide the legal fees with another lawyer
20 who is not associated in the same law firm and such lawyer may
21 receive a share in an amount to be disclosed to the client in a
22 separate writing, and that the total fee shall not be excessive
23 (not exceeding the agreed upon retainer fee). The client
24 understands and agrees to this. Client will either receive a
25 letter setting forth same or there may be an addendum attached

FB45sill

Weitz - redirect

1 to this retainer stating forth said information.

2 Q. Why is that language -- first, what does it mean, please?

3 A. Well, you are required, at the end of every case when it is
4 finished against every possible defendant, to file a closing
5 statement and that closing statement sets forth that
6 information, and also you have to list the expenses that you
7 deducted for the client.

8 THE COURT: Required by whom to file that where?

9 THE WITNESS: Court -- the Office of Court
10 Administration.

11 THE COURT: So you are required, under New York State
12 law, to file such a document?

13 THE WITNESS: Yes, your Honor.

14 BY MS. COHEN:

15 Q. And the first line that talks about attorney may divide the
16 legal fees with another attorney who is not associated with
17 that same law firm --

18 A. Sorry. Say that again?

19 Q. If you would look at the first sentence of this paragraph
20 3?

21 A. Yes.

22 Q. What is that referring to?

23 A. *An attorney may divide the legal fees with another attorney*
24 *who is not associated in the same law firm.* That would be the
25 outside referring attorney that doesn't work for

FB45sill

Weitz - redirect

1 Weitz & Luxenberg.

2 Q. And the last line of that paragraph: *Client will receive a*
3 *letter setting forth same.* What is being referred to there?
4 Is that informing the client about any fees shared with another
5 lawyer outside the firm?

6 A. That's correct.

7 Q. Just to be clear, you testified that you had no knowledge
8 of any State money that Sheldon Silver was sending to Dr. Taub
9 when he was at your firm, correct?

10 A. Correct.

11 THE COURT: Are you finished with this document?

12 MS. COHEN: Yes. Sorry, your Honor.

13 MR. COHEN: Your Honor, I don't think this was
14 addressed in cross, this question.

15 THE COURT: Sorry, I was focused on getting lights
16 back on. Let me read it.

17 Can I see the parties?

18 MS. COHEN: Sure.

FB45sill

Weitz - redirect

1 (At side bar)

2 THE COURT: Mr. Cohen, I thought you did ask about
3 that.

4 MR. COHEN: I'm sorry. Can we hear back the question?

5 THE COURT: The question is: You testified that you
6 had no knowledge of State money that Silver was sending to
7 Taub.

8 MR. COHEN: I didn't raise that in cross. The only
9 thing he said is he doesn't talk about a lot of stuff going on
10 in Albany. I don't think I addressed it in cross.

11 THE COURT: Okay. I think you need to jump off of
12 that question.

13 MS. COHEN: That was my last question, your Honor.

14 THE COURT: Okay.

15 MR. COHEN: Even better.

16 THE COURT: And, it was answered.

FB45sill1

Weitz - recross

1 (In open court)

2 MS. COHEN: No further questions, your Honor.

3 THE COURT: Okay. The objection was overruled.

4 MS. COHEN: Sorry, your Honor. If we could perhaps
5 read back the question and have the witness answer it?

6 THE COURT: He did answer it.

7 MS. COHEN: People were moving around, can we have it
8 read back, and the answer?

9 (Record read)

10 MS. COHEN: Thank you. No further questions for the
11 government.

12 MR. COHEN: Just one or two questions, your Honor.

13 RECROSS EXAMINATION

14 BY MR. COHEN:

15 Q. You said -- you were referring to that agreement that is up
16 on the board that is in your prototype agreement.

17 A. Yes.

18 Q. You said that was a rule of law, I think you meant a rule
19 of the Court, Court rules?

20 A. That's what I said, Court rules.

21 Q. And that's a rule that has changed over time, correct?

22 A. Correct, and I'm really not that familiar with it. Other
23 people in my office deal with the closing statements.

24 Q. And, in fact, that was not necessarily with respect to your
25 firm, that's not a rule that's always honored, it is often

FB45sill

Weitz - recross

1 honored in the brief; is that correct?

2 MS. COHEN: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. COHEN: I have no further questions, your Honor.

5 THE COURT: You may step down, Mr. Weitz.

6 THE WITNESS: Thank you.

7 (Witness steps down)

8 THE COURT: Call your next witness.

9 MS. COHEN: The government has two stipulations it
10 would like to read at this point, into evidence.

11 THE COURT: Ladies and gentlemen, a stipulation is a
12 fancy way to say an agreement so it is an agreement of facts
13 that should move the case along.

14 Go ahead, Ms. Cohen.

15 MS. COHEN: Your Honor, I am reading from what has
16 been marked for identification as Government Exhibit S-6, the
17 stipulation with the case caption and stipulated between the
18 parties; I won't read that standard language into the record,
19 if that's okay with your Honor.

20 THE COURT: That's fine.

21 MS. COHEN: If called to testify, a custodian of
22 records from the --

23 THE COURT: I'm sorry, do you have the S exhibits
24 listed on your exhibit list?

25 MS. COHEN: We didn't, because they were signed later.

FB45sill

Weitz - recross

1 I have copies for your Honor.

2 THE COURT: That's fine. Go ahead and read it.

3 MS. COHEN: Government Exhibit S-6: If called to
4 testify, a custodian of records from the New York State
5 Assembly, the Assembly, would testify, as follows:

6 Government's Exhibits 102, 103, 106, 107, 108, 110,
7 111, 111-1, 112 through 115, 117, 120 through 122, 124 through
8 127, 129 through 133, 136, 139, 144, 145, 148 through 154, 156,
9 158, 160 through 163, 165, 166, 167-1, 167-2, 167-3, 172
10 through 174, 176, 179, 182, 185, 193 through 195, 201 through
11 208, 211 through 213, 215, 216, 218, 221, 222, 226, 228 through
12 230, 233 through 271, 281 through 287, 932 and 934 are full and
13 complete records of the acts, transactions and events described
14 therein, were made and/or received and thereafter maintained in
15 the regular course of the New York State Assembly, were made at
16 or near the time of the acts, transactions and events recorded
17 therein, and contain information set forth by or obtained from
18 persons with knowledge of those matters.

19 Government's Exhibits 108, 110, 114, 125, 126, 127,
20 129, 130, 144, 160, 162, 165, 166, 167.1, 167-2, 167-3, 174,
21 179, 185, 220, 225, 226, 228 and 281 are true and correct
22 copies of documents found in the Assembly offices of Sheldon
23 Silver, the defendant. The documents contained in Government's
24 Exhibits 220 and 225 were found on the defendant's desk at one
25 of his Assembly offices.

FB45sill

Weitz - recross

1 Government Exhibit 102 contains true and correct
2 copies of the oaths of office on file with the State of New
3 York for Sheldon Silver, the defendant, for the time period
4 1993 through 2014.

5 Government Exhibit 103 is a true and correct copy of a
6 document entitled Speaker's Appointment Schedule which is the
7 daily schedule of appointments for Sheldon Silver, the
8 defendant, for the time period January 1, 1994 through February
9 10, 2015.

10 Government's Exhibits 242 through 266 are true and
11 correct copies of documents entitled Speaker's Call List which
12 is a list of telephone calls for Sheldon Silver, the defendant,
13 on certain dates set forth in the exhibits.

14 Government Exhibit 222 is a true and correct copy of
15 an Assembly document reflecting the annual salary, special
16 allowance, and total gross pay received by Sheldon Silver, the
17 defendant, from the State of New York from 1997 through 2014.

18 Government's Exhibits 267 through 271 are true and
19 correct copies of photographs of the Assembly and its chamber.

20 Government's Exhibits 229 and 230 are true and correct
21 copies of maps of the Assembly district represented by Sheldon
22 Silver, the defendant.

23 If called to testify, a custodian of records from the
24 Office of the Governor of the State of New York would testify,
25 as follows:

FB45sill

Weitz - recross

1 Government Exhibit 901 is a true and correct copy of
2 the public calendar for governor Andrew M. Cuomo for the period
3 June 1 through June 30th, 2011. Government Exhibit 901 is a
4 full and complete record of the acts, transactions and events
5 described therein, was made and/or received and thereafter
6 maintained in the regular course of business, was made at or
7 near the time of the acts, transactions and events recorded
8 therein, and contains information set forth by or obtained from
9 persons with knowledge of those matters.

10 It is further stipulated and agreed that this
11 stipulation may be received, in evidence, as a Government
12 exhibit at trial.

13 It is dated and signed by both parties.

14 Your Honor, the government moves Government Exhibit
15 S-6 into evidence.

16 THE COURT: That is received.

17 (Government's Exhibit S-6 received in evidence)

18 MS. COHEN: At this time the government would also
19 like to move into evidence some of the exhibits on this stip,
20 Government Exhibit 102, 107 --

21 THE COURT: Slow down.

22 MS. COHEN: Sorry, your Honor.

23 THE COURT: Okay. 102.

24 MS. COHEN: 107, subject to connection; and 120.

25 THE COURT: Okay, any objection? Okay, all right.

FB45sill

Weitz - recross

1 So, 102, 107 and 120?

2 MS. COHEN: Correct, your Honor.

3 THE COURT: They're received.

4 (Government's Exhibits 102, 107, 120 received in
5 evidence)

6 MS. COHEN: Your Honor, we would like to publish
7 Government Exhibit 102 at this time.

8 THE COURT: Sure. Can you highlight it and make it a
9 little bigger?

10 (continued on next page)

FB4YSIL2

1 THE COURT: I think that's it for 102.

2 MS. COHEN: Thank you, your Honor.

3 If you could publish Government Exhibit 107, please.

4 THE COURT: Any particular --

5 MS. COHEN: Yes. If you could just focus in on
6 perhaps the first half of the first page of Government Exhibit
7 107.

8 Your Honor, if I could just read the handwriting into
9 the record.

10 THE COURT: Okay.

11 MS. COHEN: Thank you.

12 "\$250,000 annual request." "Shelly is very interested
13 in this. Please include as a 2004-05 request," with an initial
14 D.

15 MR. COHEN: Your Honor, I think Ms. Cohen didn't read
16 the date at the top, 2/1.

17 MS. COHEN: 2/1. It says, "Kristin/Betty," which I
18 believe is highlighted, "/Steve A.," and the date on the letter
19 on the left is January 7, 2004, to the Honorable Sheldon
20 Silver, speaker, New York State Assembly, and then there are
21 some initials in the left-hand corner.

22 Your Honor, I'll just read the first sentence if I
23 can, and then we'll move on.

24 THE COURT: Okay.

25 MS. COHEN: Thank you, your Honor.

FB4YSIL2

1 "Dr. Mr. Silver --" the letterhead on top is from Robert N.
2 Taub, MD/Ph.D., Mesothelioma Center, Columbia University.
3 Honorable Sheldon Silver, Speaker of the U.S. Assembly, dated
4 January 7, 2004.

5 "Dear, Mr. Silver, I am pleased to learn that our
6 program in mesothelioma might be considered for support through
7 New York State."

8 Your Honor, if we could publish Government Exhibit
9 120.

10 Again, perhaps if you could zoom in on the first
11 paragraph there.

12 Just for the record, it's a letter on letterhead from
13 Columbia University Medical Center, Robert N. Taub, MD/Ph.D.,
14 dated October 11, 2006, to the Honorable Sheldon Silver,
15 Speaker, New York State Assembly, in the legislative office
16 building, Albany, New York. There appears to be a stamp
17 received, assembly received October 16, 2006.

18 "Dear Mr. Silver, I greatly appreciate the opportunity
19 to once again inform you of the current activities and
20 accomplishments of our mesothelioma center at the Columbia
21 University Medical Center. We are most grateful that our
22 program is being considered for continuing support."

23 Your Honor, I'd like to read another stipulation into
24 the record at this time, please. It's marked for
25 identification as Government Exhibit S-1.

FB4YSIL2

1 THE COURT: Go ahead.

2 MS. COHEN: Your Honor, I think the stipulations have
3 now been loaded. So the jury can read along if that's helpful.

4 THE COURT: That's terrific, particularly since
5 they're going to have a quiz on all these numbers.

6 MS. COHEN: I thought you were going to quiz me,
7 your Honor.

8 What's been marked for identification as Government
9 Exhibit S-1 is a stipulation with the caption of this case.
10 "It's agreed to between the parties. "Number one, if called to
11 testify, a custodian of records for the New York State
12 Department of Health, NYSDOH, would testify as follows:

13 "A, the documents marked for identification as
14 Government Exhibits 366, 367-1 through 367-4 and 368-1 through
15 368-4 are true and correct copies of records that were created
16 and/or maintained by the New York State Department of Health in
17 the ordinary course of its activities or made or received at or
18 near the time of the acts and events recorded therein and
19 contain information set forth by or obtained from persons with
20 knowledge of those matters.

21 "If called to testify, a custodian of records for the
22 New York State Office of Children and Family Services, OCFS,
23 would testify as follows:

24 "The documents marked for identification as government
25 Exhibits 389-1, 398-2, and 398-3 are true and correct copies of

FB4YSIL2

1 records that were created and/or maintained by OCFS in the
2 ordinary course of its activities or made or received at or
3 near the time of the acts and events recorded therein and
4 contained information set forth by or obtained from persons
5 with knowledge of those matters.

6 "It's further stipulated and agreed that this
7 stipulation may be received in evidence as a government exhibit
8 at trial dated and signed by the parties."

9 Your Honor, the government moves Government Exhibit
10 S-1 into evidence.

11 THE COURT: Any objection?

12 MR. SHUR: No.

13 THE COURT: All right. It's received. S-1 is
14 received.

15 (Government's Exhibit S-1 received in evidence)

16 MS. COHEN: Pursuant to Government Exhibit S-1, the
17 government would move government Exhibits 367-1, 368-1, 389-1,
18 389-2, and 389-3.

19 THE COURT: Any objection?

20 MR. SHUR: No.

21 THE COURT: 367-1, 368-1, 389-1, -2, and -3 are all
22 received.

23 (Government's Exhibit 367-1, 368-1, 389-1, 389-2, and
24 389-3 received in evidence)

25 MS. COHEN: If you could publish government Exhibit

FB4YSIL2

1 367-1 and perhaps zoom in on the text. It's a letter on the
2 assembly letterhead from Sheldon Silver, Speaker, dated July 6,
3 2005.

4 Your Honor, I'll just read the first paragraph into
5 the record.

6 THE COURT: Sure.

7 MS. COHEN: "Dear Deputy Commissioner Whalen, please
8 accept this letter and the enclosed initiative form for the
9 distribution of a \$250,000 grant to New York Presbyterian
10 Hospital-Mesothelioma Center Research account from the 2002-03
11 health care initiatives pool pursuant to the Health Care Reform
12 Act." And then it's signed, "Sincerely, Sheldon Silver,
13 speaker."

14 If you could publish Government Exhibit 368-1.

15 This is a letter on assembly letterhead from Sheldon
16 Silver, Speaker, dated November 30, 2006. Again, it's
17 addressed to Mr. Dennis Whalen, the executive deputy
18 commissioner of the New York State Department of Health.

19 "Dear Executive Deputy Commissioner Whalen, please
20 accept this letter and the enclosed initiative forms for the
21 distribution of a grant to ten health care facility programs
22 totaling \$1,878,000 from the 2003, 2004 health care initiatives
23 pool pursuant to the Health Care Reform Act."

24 It's signed, "Sincerely, Sheldon Silver, Speaker."

25 On the second page of the document, just zoom in,

FB4YSIL2

1 please, to the first half of the page. It's a list of assembly
2 HCRA grants, November 30, 2006, from the 2003-04 pool. The
3 second one up from the bottom is Columbia University Medical
4 Center. \$250,000.

5 The next document, if you could publish Government
6 Exhibit 389-1.

7 Your Honor, the title of Government Exhibit 398-1 is
8 SFY 2008/2009 legislative initiative form for the Shalom Task
9 Force, and the amount of the legislative initiative funded this
10 year, \$25,000.

11 If we could publish Government Exhibit 389-2.
12 Government 389-2 is a letter dated May 30, 2003, to the Shalom
13 Task Force, re: award amount \$25,000.

14 If we could publish Government Exhibit 389-3. If you
15 can somehow get to the second-to-the-last page of that
16 document.

17 What this is, Judge, just for the record, it's the
18 contract between the New York State Office of Children and
19 Family Services and the Shalom Task Force for the grant in the
20 amount of \$25,000 for the contract period April 2008 through
21 March of 2009.

22 The second-to-the-last page of Government Exhibit
23 389-1 is a disclosure and accountability certification. If you
24 look at IV. If you could enlarge that.

25 The contractor name on this disclosure and

FB4YSIL2

Taub - Direct

1 accountability certificate is Shalom Task Force. If you go to
2 IV, it says, "Sponsoring Members. The sponsoring member of the
3 local legislative initiative pursuant to which this contract
4 will be funded is Assemblyman Sheldon Silver."

5 Thank you, your Honor. At this time the government is
6 ready to call its next witness unless you want to do our
7 morning break.

8 THE COURT: Why don't you go ahead and call him and
9 get started.

10 MS. COHEN: Okay, your Honor. The government calls
11 Dr. Robert Taub.

12 ROBERT TAUB,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GOLDSTEIN:

17 Q. Good morning, Dr. Taub.

18 A. Good morning.

19 Q. Dr. Taub, where do you live?

20 A. In Manhattan.

21 Q. Have you lived in the New York area for most of your life?

22 A. Yes.

23 Q. Are you married?

24 A. Yes.

25 Q. For how long have you been married?

FB4YSIL2

Taub - Direct

1 A. Forty-seven years.

2 Q. You have any children?

3 A. Yes.

4 Q. What are their names, and how old are they?

5 A. Jonathan is 45; Amy is 42.

6 Q. Do you have any grandchildren?

7 A. Yes.

8 Q. How many?

9 A. Three.

10 Q. Dr. Taub, starting after high school, if you could tell the
11 jury, what's your educational background?

12 A. I went to college at Yeshiva University in New York. I
13 graduated in 1957. I was the first student from Yeshiva to be
14 admitted to the Yale University School of Medicine, and I got
15 an MD degree, a doctor degree, from Yale in 1961.

16 I then did a postgraduate work at Yale in pathology.
17 I took a pathology internship and did an internship and
18 residency in medicine and in hematology at the New England
19 Medical Center in Boston.

20 Q. Did you get a Ph.D., Dr. Taub?

21 A. Following that, I went to the National Institute for
22 Medical Research in London and was there for two years. I got
23 a Ph.D. degree in 1969 from the University of London. That's
24 my educational background.

25 Q. Dr. Taub, after receiving your Ph.D., where have you

FB4YSIL2

Taub - Direct

1 worked?

2 A. I came back from England and started at the Mount Sinai
3 School of Medicine here in New York as an instructor and then
4 an assistant professor, and I rose to associate professor
5 there.

6 I then went to the Medical College of Virginia where I
7 spent 3 1/2 years there as the chairman of medical oncology,
8 the chief doctor, the chief oncologist of four of the hospitals
9 in the area at that time.

10 I was an American Cancer Society professor of
11 oncology, which is an honorary title, but that was part of my
12 work.

13 Q. Where did you go after you were in Virginia?

14 A. I came back to -- after Virginia, I came back to New York,
15 and I've been -- I came back to New York in 1981 and have been
16 at Columbia Presbyterian since that time as a professor of
17 medicine. I have tenure of title and have had a variety of
18 posts at Columbia since that time.

19 Q. You said that you are at Columbia Presbyterian. What's the
20 relationship between Columbia University Medical Center and
21 Presbyterian Hospital?

22 A. Columbia University College of Physicians and Surgeons is
23 the medical school where they teach doctors. And the hospital,
24 the main hospital affiliated with the medical school where the
25 students would practice but also was a big hospital, was the

FB4YSIL2

Taub - Direct

1 Presbyterian Hospital originally. It's now merged with many
2 other hospitals.

3 Q. Dr. Taub, do you have any board certifications?

4 A. Yes. I'm board certified to practice in four
5 subspecialties: In internal medicine, in hematology and
6 oncology, and also in allergy immunology.

7 Q. If you could tell the jury: What does it mean to have a
8 board certification?

9 A. It means that you're an expert in a certain sense. You
10 have to take tests. There are tests for that. You have to
11 take residencies, and you have had to have both training and
12 tests. Then you get a certification if you pass the test.

13 Q. At some point in your career, did you begin to focus on a
14 disease called mesothelioma?

15 A. Yes.

16 Q. About when was that?

17 A. In the early 90's.

18 Q. What is mesothelioma?

19 A. Mesothelioma is a disease of the lining membranes, the
20 lining tissue, of the lung, also the lining tissue of the bowel
21 and the lining tissue of the heart and the testes.

22 It's a disease where that lining turns into cancer and
23 grows and thickens. It's a bad disease to have, a terrible
24 disease.

25 Q. What are the known causes of mesothelioma?

FB4YSIL2

Taub - Direct

1 A. The two main causes of mesothelioma are, first and
2 foremost, exposure to asbestos. That's the foremost reason why
3 you get it. We also know that some patients who have had
4 medical radiation of some type will also get mesothelioma.

5 Q. About how many other doctors across the country focus or
6 specialize in mesothelioma?

7 A. Less than ten.

8 Q. I want to direct your attention to the year 2000. What
9 happened in that year to your position at Columbia?

10 A. At that time I was named to be the Vivian and Seymour
11 Milstein family professor of clinical medicine. That's called
12 an endowed professorship.

13 Q. What did it mean to have an endowed professorship?

14 A. That's a portion -- a donation was made to the institution
15 to support my salary so that I can work in mesothelioma in a
16 bit more freeway, in a freer way.

17 Q. What was your relationship to the Milsteins?

18 A. I was a physician to one of the Milsteins.

19 Q. Now, at that time, in or about 2000, what kind of patients
20 did you see in your medical practice?

21 A. By the year 2000, I would say close to half of my practice
22 was mesothelioma at that time. Mesothelioma is a rare disease.

23 Q. What type of treatments did you give to your patients?

24 A. I'm a medical oncologist. Medical oncologists generally
25 give the patients chemotherapy. They don't operate on the

FB4YSIL2

Taub - Direct

1 patients, but they give them chemotherapy, and I devised a
2 number of new treatments for the disease and gave them what was
3 conventional at the time as well.

4 Q. Where do your patients with mesothelioma typically come
5 from?

6 THE COURT: What do you mean by that? Where do they
7 live or who sent them to him?

8 BY MR. GOLDSTEIN:

9 Q. Where do your patients typically live?

10 A. The patients that I saw came from all over the world, all
11 over America. There are only about 100 new patients with
12 mesothelioma that are diagnosed in the New York area. So most
13 of them come from outside the state.

14 Q. Is that 100 new cases in the New York area per year
15 approximately?

16 A. Per year, yes.

17 Q. So about what percentage of your patients were New Yorkers
18 as compared to from all over the country?

19 A. I would say about a third.

20 Q. Dr. Taub, how do you feel about the patient treatment that
21 you do?

22 A. I love the work that I do. That's the only thing I can
23 say. I really feel very privileged to be able to take care of
24 these people. This is a very terrible disease. I feel that
25 I'm good at it.

FB4YSIL2

Taub - Direct

1 I love teaching about medicine. I love doing
2 research, and I'm very, very passionate about finding a cure
3 for the disease and treating it well.

4 Q. About how many mesothelioma patients have you treated over
5 your career?

6 A. The estimate is about 2,000.

7 Q. How old are you now?

8 A. I'm 79.

9 Q. Are you still seeing patients with mesothelioma?

10 A. Yes, I am.

11 Q. Now, in addition to your treatment of patients, have you
12 also conducted research into mesothelioma?

13 A. Yes.

14 Q. What areas has your research focused on?

15 A. Pretty much all the areas that are relevant to
16 mesothelioma. We have research going on in treatment,
17 treatment programs and clinical trials.

18 We have programs which are aimed at better diagnosing
19 it, looking under the microscope and diagnosing the disease.
20 We have programs dealing with how patients cope with the
21 disease. We look at the quality of life of treatment because
22 the treatments sometimes are very strong.

23 We have now programs which are looking at the genetics
24 of the mesothelioma to find what is the gene that actually goes
25 wrong in this disease.

FB4YSIL2

Taub - Direct

1 Q. Dr. Taub, have you published any scientific works over the
2 course of your career?

3 A. Yes, I have.

4 Q. Can you give us an approximation of about how many articles
5 you published in scientific or medical journals.

6 A. It's about 150, a little over 150.

7 Q. What breakthroughs, if any, has your research led to?

8 A. Nobody works in a vacuum, but we have been, I would say, at
9 the forefront of a lot of new developments in mesothelioma
10 having to do with how chemotherapy is given. Sometimes we
11 devise new techniques for giving chemotherapy right into the
12 belly, also into the chest.

13 Over time, let's say when I started in the 90's,
14 patients with peritoneal mesothelioma, which is one of the
15 things that I see most of, have lived under a year.

16 Our average now is four years, and some of the
17 patients just go on and on for 10 or 12 years longer than that.
18 So there's been a big change in the actual survival of these
19 patients and the quality of their life.

20 Q. You mentioned peritoneal mesothelioma. If you could just
21 briefly explain for the jury the difference between that and
22 pleural mesothelioma.

23 A. As I said, pleural mesothelioma is when the disease hits
24 the lining of the lung. To is becomes very difficult to
25 breath, and the patients usually die of some type of pneumonia.

FB4YSIL2

Taub - Direct

1 Peritoneal mesothelioma is when it hits the same
2 membranes that are all over the bowel. What happens then is
3 that the bowel simply shuts down, and you get bowel
4 obstruction. That's what patients usually will die from.

5 Q. Dr. Taub, did there come a time when a mesothelioma center
6 was established at Columbia?

7 A. Yes.

8 Q. When was that?

9 A. It was established for me at about the same time, in about
10 2000.

11 Q. Was that about the same time that you became the Milstein
12 professor?

13 A. Yes.

14 Q. What was the mesothelioma center at Columbia?

15 A. The mesothelioma center really was a concept where these
16 kinds of programs -- you can't do this alone. So it was a
17 concept where the center was given sort of -- it was an
18 endowment so that I could get people together and get doctors
19 to cooperate -- surgeons, pathologists, and other people -- to
20 develop these kinds of programs and to study the disease and to
21 help it.

22 THE COURT: Mr. Goldstein, do you want to look for a
23 good place to stop, and we'll stop for the morning.

24 MR. GOLDSTEIN: This is a perfect place to stop.

25 THE COURT: Ladies and gentlemen, we're going to take

FB4YSIL2

Taub - Direct

1 our morning break. Please don't talk about the case. I see
2 some of you are shivering. The temperature in this courtroom
3 can range from a little chilly to swelteringly hot. It's a
4 little better to be chilly than swelteringly hot. So don't
5 discuss the case during your break.

6 (Jury not present)

7 THE COURT: Ten minutes, folks.

8 MS. COHEN: Thank you, your Honor.

9 (Recess)

10 THE COURT: Okay. Mr. Goldstein.

11 Dr. Taub, you're still under oath.

12 THE WITNESS: Thank you.

13 MR. GOLDSTEIN: Thank you, your Honor.

14 BY MR. GOLDSTEIN:

15 Q. Dr. Taub, before we took that break, you were testifying
16 about the mesothelioma center at Columbia that started in 2000.

17 Do you recall that?

18 A. Yes.

19 Q. When the mesothelioma center started, where did it get its
20 funding from?

21 A. It started -- its initial funding began with an endowment
22 from the Milstein family.

23 Q. Approximately how much was the gift that the Milstein
24 family made for the mesothelioma center to get it started?

25 A. I believe around \$7,000,000 and \$8,000,000 is what I think.

FB4YSIL2

Taub - Direct

1 Q. Dr. Taub, in your experience doing mesothelioma research
2 over the years, how have you found -- to what extent is
3 research money available for research into mesothelioma?

4 A. Well, not as much as one would wish if you're doing
5 mesothelioma research. Mesothelioma is a rare disease. There
6 are only 3,000 new patients a year in the United States as
7 opposed to, let's say, 180,000 patients with Colon cancer,
8 250,000 with prostate cancer.

9 So it's not a very high priority, let's say, for
10 government funding. So that the funding for mesothelioma
11 research is by donation, either from private foundations or
12 private individuals. And funding will sometimes come from the
13 government, but government grants are very rare.

14 Q. Has funding for mesothelioma research also come from law
15 firms?

16 A. It does come from law firms or from foundations which are
17 supported by law firms.

18 Q. Now, has your mesothelioma center applied for government
19 grant money?

20 A. Yes.

21 Q. And other than grants from New York State, which we will
22 discuss later on, what government grants has the mesothelioma
23 center applied for?

24 A. We have applied for funding from the defense department,
25 the DOD.

FB4YSIL2

Taub - Direct

1 Q. That's the United States Department of Defense?

2 A. Yes.

3 Q. What would you have used the money for, if you got it, from
4 the Department of Defense?

5 A. The money we have used has been for programs for
6 diagnosing, for treating, new treatment programs, for clinical
7 trials, and for basic research to find out more about how the
8 disease is caused and what happens with it.

9 Q. Why did the Department of Defense have potential money
10 available for mesothelioma research?

11 A. Well, the Department of Defense and the government feels
12 that many of the people in the military, particularly in the
13 Navy, were heavily exposed to asbestos during World War II,
14 particularly in the Navy because large amounts of asbestos were
15 used in the ships. They were used to spray the engine rooms,
16 and asbestos was all over the walls and in the air that the
17 people were breathing.

18 Q. When you applied for this Department of Defense grant, what
19 was your understanding as to how your application would be
20 reviewed?

21 A. Like all applications to the government, it's viewed by a
22 process called peer review, which means there is a group of
23 people who will read the grant and decide whether or not it's
24 meritorious, whether it deserves to be funded, whether it's the
25 right thing for the government to support.

FB4YSIL2

Taub - Direct

1 Q. Were you successful in obtaining the grant from the
2 Department of Defense?

3 A. Not at that particular time.

4 Q. Now, are you familiar with an organization called the
5 Mesothelioma Applied Research Foundation or MARF?

6 A. Yes.

7 Q. What is the Mesothelioma Applied Research Foundation?

8 A. The Mesothelioma Applied Research Foundation was started in
9 order to help bridge the gap in funding for mesothelioma
10 research.

11 It was an organization which would provide funds that
12 were donated to it. It was a non-profit organization. Funds
13 would be donated to it, and then funds would be given to
14 patients -- not to patients.

15 Funds would be given to researchers who wanted to
16 apply for the grants, and they would apply, and the funds would
17 then be allocated according to merit.

18 Q. This organization is referred to as MARF?

19 A. Yes.

20 Q. What was your relationship with MARF?

21 A. I was one of the early members of MARF. I was on their
22 scientific committee when MARF was formed.

23 Q. And how did MARF get its funding?

24 A. MARF got its funding -- my understanding was that MARF got
25 its funding initially by a contribution from a mesothelioma

FB4YSIL2

Taub - Direct

1 attorney who then got several of his colleagues from other law
2 firms to contribute as well. And it also got donations from
3 patients, particularly those who had gotten settlements for
4 their mesothelioma.

5 The government had set aside a huge amount of money in
6 a mesothelioma trust fund which came from companies which went
7 bankrupt. So those funds were theoretically possible to use
8 for mesothelioma research as well.

9 Q. You testified that MARF then gets money from lawyers and
10 others.

11 What does MARF do with the money that it receives?

12 A. MARF will give out grants to researchers who apply for it
13 and will support the research and will highlight the research
14 and has other functions as well, all having to do with
15 treatment and care of mesothelioma patients.

16 Q. If one is to apply for a grant from MARF, what is the
17 review process for those grant applications?

18 A. The review process is very similar to that used by the
19 government, and that is we have committees. I'm on that
20 scientific advisory board. That was one of my functions.

21 We have committees set up which will evaluate the
22 grants and give it a score. If we think it's very good work or
23 if we think it's very important work, if we think it's
24 innovative work, if it's new, if it's going to advance the
25 field, we assign it a score.

FB4YSIL2

Taub - Direct

1 And then we all meet and count up the scores and see
2 how much money there is available to give, and then we give it
3 according to that rank. We rank the applications in terms of
4 their worth.

5 Q. Are you familiar with an individual names Mary Hesdorffer?

6 A. Yes.

7 Q. Who is Mary Hesdorffer?

8 A. Mary Hesdorffer is currently the executive director of
9 MARF. She's a nurse practitioner who spends a great deal of
10 her time caring for patients as well, and Mary Hesdorffer was a
11 nurse who worked with me for nine years.

12 Q. How would you describe your relationship with Mary
13 Hesdorffer?

14 A. It's a very good relationship. We're really good friends.

15 Q. You testified a moment ago about funding from law firms and
16 lawyers.

17 In your years of treating patients with mesothelioma,
18 have you dealt directly with lawyers who represent mesothelioma
19 patients?

20 A. Yes.

21 Q. Have you served as an expert for law firms that bring
22 mesothelioma cases?

23 A. Yes. On occasion, yes.

24 Q. And have you referred your patients to law firms for
25 representation?

FB4YSIL2

Taub - Direct

1 A. Yes.

2 Q. What is your understanding as to how valuable mesothelioma
3 patients are to law firms?

4 A. I think they're very valuable.

5 Q. What is the basis for that understanding?

6 A. There is a trust fund available from the government which
7 was put together from the bankruptcies of very, very large
8 corporations that had exposed patients knowingly, exposed
9 people knowingly, to asbestos. And that trust fund is in the
10 neighborhood of \$20,000,000,000 to \$30,000,000,000. And that
11 money is available only through law firms to compensate victims
12 of mesothelioma.

13 So the law firms will earn fees from getting
14 settlements for their clients. I think that's a source of
15 income, and the settlements are large, in the millions usually.

16 Q. Do you have a view as to whether law firms who represent
17 patients with mesothelioma should donate to research?

18 A. Yes, I do.

19 THE COURT: Repeat the question.

20 BY MR. GOLDSTEIN:

21 Q. Dr. Taub, do you have a view as to whether law firms who
22 represent patients with mesothelioma should donate to research
23 into mesothelioma?

24 A. Yes.

25 Q. What is your belief or what is your view?

FB4YSIL2

Taub - Direct

1 A. I believe law firms who represent these clients in the hope
2 of getting settlements from them in the trust fund should also
3 have a social responsibility to donate some of the profits that
4 they make to research.

5 Q. Why do you believe that's a social responsibility?

6 MR. MOLO: Objection.

7 THE COURT: Overruled.

8 Go ahead.

9 THE WITNESS: Because the funds are essentially set
10 aside for mesothelioma victims, and the money is sitting there,
11 and it's not going to be completely used because of the number
12 of new mesothelioma patients and because the money earns
13 interests and it has not really diminished that much over the
14 years, and it should be used to help future victims.

15 BY MR. GOLDSTEIN:

16 Q. Through your career, have you wanted to receive money from
17 law firms for your mesothelioma research?

18 A. Yes.

19 Q. Why did you want that?

20 A. Because I -- well, I'm put on this earth to help these
21 people. That's the way I feel about it. I mean, that's what I
22 want to do.

23 I believe that to do that requires research, and the
24 research is very important, and I believe that research
25 requires funds. You can't do research without money.

FB4YSIL2

Taub - Direct

1 Q. Given that view, have you tried in your career to refer
2 patients to law firms that support mesothelioma research?

3 A. Yes.

4 Q. Are you familiar with the law firm Weitz & Luxenberg?

5 A. Yes.

6 Q. How did you first become familiar with Weitz & Luxenberg?

7 A. Some of my patients actually were clients of Weitz &
8 Luxenberg.

9 Q. As far as you were aware, did Weitz & Luxenberg support
10 mesothelioma research?

11 A. They did not.

12 Q. Did Weitz & Luxenberg provide any funding to MARF?

13 A. I don't believe so.

14 Q. Did Weitz & Luxenberg provide any funding for your
15 research?

16 A. They did not.

17 Q. What did you think of Weitz & Luxenberg's lack of funding
18 for mesothelioma research?

19 A. I thought it was a situation that should be remedied,
20 should be corrected, and they should recognize that they have a
21 social responsibility to give back something to the research
22 and those patients.

23 Q. Was the issue of whether Weitz & Luxenberg gave funding to
24 mesothelioma research discussed at MARF meetings that you
25 attended?

FB4YSIL2

Taub - Direct

1 A. Yes, it was.

2 Q. What was the subject of those discussions?

3 A. That, as apart from other law firms that are donating to
4 MARF and helping MARF get on its feet, Weitz & Luxenberg was
5 singularly absent from that group.

6 Q. Let me direct your attention to the year 2003. Prior to
7 the year 2003, had you referred any of your patients to Weitz &
8 Luxenberg?

9 A. I don't believe so.

10 Q. Now, are you familiar with Sheldon Silver?

11 A. Yes.

12 Q. How did you first meet Sheldon Silver?

13 A. I believe I was introduced to Mr. Silver in 1984 by my
14 close family friend, Mr. Daniel Chill.

15 Q. What was your relationship with Mr. Daniel Chill?

16 A. Daniel Chill and I were friends since childhood, and we
17 went through college and high school together. And, when I
18 went to Yale Medical School, he went to Yale Law School. So we
19 have stayed in contact, and our families have stayed in contact
20 since.

21 Q. How did Mr. Chill know Mr. Silver?

22 A. Mr. Chill I understand worked in Albany. He went into
23 politics after law school, and he worked as the counsel for a
24 previous speaker of the assembly, Mr. Stanley Steingut. Much
25 more than that, I don't know. But I know he had other

FB4YSIL2

Taub - Direct

1 functions in Albany since then.

2 Q. Did you know whether Mr. Chill had a relationship with
3 Sheldon Silver?

4 A. Mr. Chill knew Mr. Silver well.

5 Q. So, back to that first encounter in 1984, what do you
6 recall about meeting Sheldon Silver then?

7 A. I was introduced to Mr. Silver as a friend of Mr. Chill.

8 Q. Following that introduction, what was your relationship
9 with Mr. Silver, if any, between 1984 and 2003?

10 A. We may have seen each other at Jewish events or at weddings
11 or at vacations. We would vacation often in the same hotel for
12 Passover.

13 Q. Did you have any personal relationship with him at that
14 time?

15 A. No.

16 Q. Did there come a time when you learned that Silver worked
17 at Weitz & Luxenberg?

18 A. Yes.

19 Q. How did you learn that?

20 A. I learned that because the law firm of Weitz & Luxenberg
21 sent a request for medical records on one of its clients, and I
22 saw on the stationery on the upper right-hand corner that
23 Mr. Silver was listed as of counsel to Weitz & Luxenberg.
24 That's how I knew he was a member of the firm.

25 Q. At the time that you saw that, did you know what position

FB4YSIL2

Taub - Direct

1 Sheldon Silver had in state government?

2 A. Yes.

3 Q. What did you know?

4 A. I knew he was speaker of the assembly.

5 Q. Now, after you learned from that piece of stationery that
6 Sheldon Silver was of counsel to Weitz & Luxenberg, did there
7 come a time when you had an encounter with him?

8 A. Yes.

9 Q. Tell the jury what the circumstances were of that
10 encounter.

11 A. It was in 2003, and I believe it was at some time when we
12 were vacationing, but I'm not certain.

13 Q. Who introduced you to Sheldon Silver?

14 A. Mr. Chill.

15 Q. What, if anything, did you say to Sheldon Silver during
16 that meeting in 2003?

17 A. I explained to Mr. Silver that I was a mesothelioma
18 physician and that I had now been specializing in that disease
19 to a certain extent and that I was also on the board of
20 directors of an organization called MARF.

21 And I explained to him that we would like his help, if
22 possible, to influence Weitz & Luxenberg to donate funds to
23 MARF.

24 Q. Why did you ask him if he could get -- if you could get his
25 help in getting Weitz & Luxenberg to donate funds to MARF?

FB4YSIL2

Taub - Direct

1 A. Because I felt that he was a senior member of the firm. He
2 would have influence in order to be able to discuss this and
3 would allow us access. We had tried to speak to -- I believe
4 to Mr. Weitz and were unsuccessful, and we had tried some
5 approaches. I know MARF. I felt that Mr. Silver might be able
6 to help in that regard.

7 MR. MASTER:

8 (Continued on next page)

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FB45sil3

Taub - direct

1 BY MR. GOLDSTEIN:

2 Q. Did you discuss with Mr. Silver the fact that there were
3 other law firms that were giving money to mesothelioma
4 research?

5 A. Yes.

6 Q. How did Sheldon Silver respond to your request for his help
7 in getting Weitz & Luxenberg to fund mesothelioma research?

8 A. I don't remember details of that conversation but I felt
9 that it was in the negative, he could not -- did not feel he
10 could do it.

11 Q. Now, you testified that it was Chill who introduced to you
12 to Silver?

13 A. Yes.

14 Q. Did you tell Chill about this conversation that you had
15 with Sheldon Silver?

16 A. Yes.

17 Q. Did you tell him about your request to Silver for help in
18 trying to get funding from Weitz & Luxenberg?

19 A. Yes, I did.

20 Q. At some point after that encounter with Sheldon Silver, did
21 you come to learn that Sheldon Silver wanted you to send him
22 mesothelioma cases?

23 A. Yes.

24 Q. Was that a specific request made to you?

25 A. Yes, it was.

FB45sil3

Taub - direct

1 Q. And what was your understanding of what Sheldon Silver
2 wanted by wanting cases?

3 A. Mr. Silver indicated, through -- through Mr. Chill,
4 actually --

5 MR. MOLO: Objection, your Honor.

6 THE COURT: Sustained.

7 Q. What did you understand the desire for cases to mean?

8 THE COURT: Can I see the parties at side bar? I
9 don't think that's going to solve the problem.

FB45sil3

Taub - direct

1 (At side bar)

2 THE COURT: Okay. So, do I understand correctly that
3 his conversation was with Chill, not with Silver?

4 MR. SHUR: As he remembers it Chill came to him and
5 said Shelly wants cases.

6 THE COURT: Okay. Why isn't that hearsay?

7 MR. GOLDSTEIN: I think that Chill was the messenger
8 of that communication.

9 THE COURT: How are you going to prove that?

10 MR. GOLDSTEIN: We had a discussion with defense
11 before this about trying to get around this hearsay issue and
12 my understanding is that there is no dispute that it was
13 Sheldon Silver who communicated to Dr. Taub his desire for
14 cases. And so, whether or not it came from Mr. Chill is what I
15 was trying actually to ask around and so I appreciated your
16 Honor sustaining the objection but his understanding that
17 Sheldon Silver wanted cases is the basis for why he started
18 sending him the cases.

19 THE COURT: So what was the deal that you all were
20 going to work around?

21 MR. MOLO: They weren't going to introduce the
22 conversation that just almost came in but for my objection.

23 THE COURT: Okay.

24 MR. MOLO: And in fact asked -- it hasn't come in
25 completely.

FB45sil3

Taub - direct

1 THE COURT: It hasn't come in at all.

2 MR. MOLO: Okay, so --

3 THE COURT: So, do I correctly understand that the
4 defense is not objecting to the next question that I
5 interrupted which is what was your understanding of what
6 Mr. Silver wanted?

7 MR. MOLO: I think if the question is did you believe
8 that Mr. Silver, as a part of Weitz & Luxenberg, wanted
9 mesothelioma cases, the answer to that is yes and I have no
10 problem with that.

11 MR. GOLDSTEIN: I just want -- the idea that he wants
12 cases, I don't think the jury fully understood what that means.
13 All I want him to say is that that meant he wanted me to refer
14 my patients.

15 THE COURT: To him?

16 MR. GOLDSTEIN: To him.

17 MR. MOLO: That's fine.

18 THE COURT: Okay.

19 MR. GOLDSTEIN: Thank you, Judge.

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FB45sil3

Taub - direct

1 (In open court)

2 THE COURT: Okay, Mr. Goldstein you need to re-put the
3 question.

4 BY MR. GOLDSTEIN:

5 Q. Dr. Taub, you came to testify that Sheldon Silver wanted
6 cases?

7 A. Yes.

8 Q. Can you tell the jury what it means to want a case, in your
9 view?

10 A. What that meant was that he would like referrals to the law
11 firm that he represented to be given through him, that he would
12 be the person who would take on the case for the law firm.

13 Q. Now, approximately how much time had passed between that
14 encounter that you described with Sheldon Silver where you
15 asked him for his help in obtaining funding from
16 Weitz & Luxenberg and the request that you received to send
17 Sheldon Silver cases?

18 A. Between a week and two weeks.

19 Q. Now, what understanding did you have as to how valuable a
20 mesothelioma case could be for a law firm?

21 A. For a law firm? Could be very valuable, yes.

22 Q. Now, in response to Sheldon Silver's request, did you in
23 fact start sending patients of yours to Sheldon Silver for
24 legal representation?

25 A. Yes.

FB45sil3

Taub - direct

1 Q. What were you hoping to accomplish by sending him cases?

2 A. I hoped to develop a relationship with him that would help
3 fund mesothelioma research and would help my patients as well.

4 Q. What benefit, if any, did you expect Sheldon Silver to
5 receive from these referrals?

6 A. I knew it would benefit his standing in the firm. That was
7 the way I had thought about it and I didn't know precisely how
8 it would benefit him otherwise.

9 Q. Were you aware of any financial benefit that Silver could
10 receive from obtaining cases from you?

11 A. I thought it was possible, yes.

12 Q. Did you know what the financial arrangement was between
13 Sheldon Silver and Weitz & Luxenberg?

14 A. I had no idea.

15 Q. When you started sending cases to Sheldon Silver, how did
16 he react?

17 A. I think that he conveyed that he was pleased with the
18 referrals that he was getting.

19 Q. Did you discuss with Daniel Chill the fact that you had
20 started referring cases to Sheldon Silver?

21 MR. MOLO: Objection, your Honor.

22 THE COURT: Overruled.

23 A. Yes.

24 Q. After you started sending cases to Sheldon Silver, did
25 there come a time when you learned that he wanted you to write

FB45sil3

Taub - direct

1 a letter to him about state funding for your research program?

2 A. Yes.

3 Q. And in response to what you learned, did you in fact draft
4 the letter to Silver making a request for state funding for
5 your research?

6 A. Yes.

7 Q. About how soon after you started making referrals to Silver
8 did you write that letter seeking state funding for your
9 research?

10 A. I'm not sure. Several months.

11 Q. And who helped you write the letter to Silver?

12 A. Mr. Chill.

13 Q. I am going to ask you some more questions about that letter
14 in some more detail in a moment, but at some point after you
15 sent that letter to Silver, did your research program in fact
16 receive state funding?

17 A. Yes, it did.

18 Q. How many total grants did your program receive from New
19 York State?

20 A. Columbia University received two contracts from the State
21 for \$250,000 each.

22 Q. So it was a total of \$500,000?

23 A. Correct.

24 Q. At the time that Columbia University received those state
25 funds, were you sending cases to Sheldon Silver?

FB45sil3

Taub - direct

1 A. Yes.

2 Q. Did you keep track of the cases that you sent to Silver?

3 A. I did not.

4 Q. Did you keep any record each time that you sent him a case?

5 A. I did not.

6 Q. Starting in late 2003, for how long of a period did you
7 refer cases to Sheldon Silver?

8 A. I referred cases to him for a period of about 10 years.

9 Q. Looking back over that 10-year period, do you know about
10 how many cases you sent to Sheldon Silver?

11 A. I don't know exactly. I would estimate it somewhere
12 between 25 and 50. Closer to 25.

13 Q. What was your purpose in sending all of those cases to
14 Sheldon Silver?

15 A. I wanted to maintain a relationship with him such that he
16 would be incentivized to be an advocate for mesothelioma
17 research and that he would feel -- he would help us in
18 obtaining funding for mesothelioma research.

19 Q. Did you want him to help fund your program in particular?

20 A. Of course.

21 Q. During this time period where you were referring cases to
22 Silver, in addition to asking for state money for your
23 research, did you also ask Silver for other types of
24 assistance?

25 A. Yes.

FB45sil3

Taub - direct

1 Q. Did you seek his help in getting your daughter an
2 internship with a state judge?

3 A. Yes.

4 Q. Did you seek his help in getting your son a job?

5 A. Yes.

6 Q. Did you seek his help with an event to raise awareness and
7 funding for mesothelioma?

8 A. Yes.

9 Q. And did Silver in fact provide assistance with those
10 requests?

11 A. Yes, he did.

12 Q. I want to call your attention to the summer of 2014. Did
13 there come a time when investigators from the government came
14 to your apartment?

15 A. Oh yes.

16 Q. What time of day was it?

17 A. It was 6:00 in the morning.

18 Q. How many investigators came to your apartment?

19 A. Two.

20 Q. What did the investigators ask you?

21 A. They asked me if I had referred cases to Mr. Silver.

22 Q. How did you respond to that question?

23 A. I denied doing so.

24 Q. Why did you deny sending cases to Sheldon Silver?

25 A. Because I was terrified and panicked and I irrationally

FB45sil3

Taub - direct

1 wanted to divorce myself from any pending investigation.

2 Q. Now, after you lied to the investigators did there come a
3 time when you decided to meet with the government?

4 A. Yes.

5 Q. Why did you make that decision?

6 A. Because I realized I made a mistake.

7 Q. So, did you in fact come in and meet with the government
8 after that first encounter at your apartment?

9 A. Yes.

10 Q. When you met with the government this next time, did you
11 tell the government that you had in fact referred cases to
12 Sheldon Silver?

13 A. Yes, I did.

14 Q. Did you tell the government that you received grant money
15 from the state?

16 A. Yes.

17 Q. Did you tell the government that Silver helped your son get
18 a job?

19 A. Yes.

20 Q. Did you tell the full truth about why you were sending all
21 those cases to Sheldon Silver?

22 A. I initially minimized all of the -- all of those events.

23 Q. Why did you minimize the reasons for making those
24 referrals?

25 A. I was still reluctant to get involved in the investigation.

FB45sil3

Taub - direct

1 Q. Did you ultimately tell the government the truth about the
2 connection between the referrals you were making to Silver and
3 your requests for state funding?

4 A. At some point I arrived at that point and we went -- went
5 into it in detail, yes.

6 Q. And what was that connection?

7 A. The connection is that I gave referrals to Mr. Silver in
8 order to develop a relationship whereby he would help fund
9 mesothelioma research and help those patients.

10 Q. In your meetings with the government, did you tell the
11 government about any other conduct of yours that you wanted the
12 government to know about?

13 A. Yes.

14 Q. In particular, did you tell the government about an issue
15 with prescription drugs for your wife?

16 A. Yes.

17 Q. What did you tell the government about that?

18 A. I told the government that on maybe one to three occasions
19 I had asked a colleague to write prescriptions for narcotics
20 for myself because my wife, who has a very severe, chronic pain
21 problem, had run out of her pills.

22 Q. What is your wife's medical condition?

23 A. She has chronic pain syndrome which is very severe, among
24 other things.

25 Q. And why did you not just write the prescription yourself?

FB45sil3

Taub - direct

1 A. It's not a good idea for a doctor to write prescriptions
2 for narcotics for his family because it can become a habit.

3 Q. And how many times did you get a prescription for your wife
4 where you said it was for yourself?

5 A. I think twice, possibly a third time, but I think twice all
6 together, over the years.

7 Q. Did there come a time when you entered into an agreement
8 with the government?

9 A. Yes.

10 Q. If you can look in the binder that's in front of you and
11 look at the first document in the binder; do you recognize that
12 document, Dr. Taub?

13 A. Yes.

14 Q. That's marked for identification as Government Exhibit
15 3638-06?

16 THE COURT: 3538.

17 MR. GOLDSTEIN: 3538-06. Thank you, your Honor.

18 Q. What is this document, Dr. Taub?

19 A. It is a non-prosecution agreement.

20 THE COURT: Dr. Taub, you are going to have to talk
21 into the mic and you have to keep your voice up.

22 A. Sorry.

23 It is a non-prosecution agreement.

24 Q. Is that the agreement you entered into with the government?

25 A. Yes.

FB45sil3

Taub - direct

1 Q. Did you sign this document?

2 A. Yes.

3 Q. You can set the document aside, Dr. Taub.

4 What is your understanding of what that agreement
5 requires you to do?

6 A. It requires me to tell the truth.

7 Q. And if you do that, what is your understanding of what the
8 government's obligations are under the agreement?

9 A. It is a non-prosecution agreement, they will not prosecute
10 me for wrongdoing.

11 Q. Is that wrongdoing related to your referrals of patients to
12 Sheldon Silver and when you lied to the investigators?

13 A. I think it refers to my lying to the investigators. I
14 don't know about the other.

15 Q. Dr. Taub, if you can open up, go back to 3538-06? If you
16 would look at the first paragraph of the agreement?

17 A. Yes.

18 Q. Does that refresh your recollection as to whether or not
19 the government, if you tell the truth, has agreed not to
20 prosecute you for conduct relating to your referrals to Sheldon
21 Silver?

22 A. Yes, it does. It is very specific in paragraph C.

23 Q. Now, after -- you can set that aside, Dr. Taub.

24 After the charges in this case became public, what
25 happened to your job at Columbia?

FB45sil3

Taub - direct

1 A. I was terminated from Columbia.

2 Q. At that time for how long had you been a professor at
3 Columbia?

4 A. 35 years.

5 Q. What did you do in response to being terminated from
6 Columbia?

7 A. I was terminated from Columbia without cause and
8 peremptorily and I am a tenured -- I have tenure of title at
9 Columbia and the bylaws of Columbia specify that in order to
10 terminate me there must be a due process, which I did not
11 receive. So, I have sued Columbia asking for that due process.

12 Q. What is the status of your lawsuit against Columbia?

13 A. It is ongoing. I'm still working at Columbia. They're
14 under an injunction that says I must continue to work, that I
15 am allowed to continue to work and see patients, which I do.

16 Q. Who is it that put that injunction in place that has
17 allowed you to keep working and seeing patients at Columbia?

18 A. The state court.

19 Q. Dr. Taub, I want to now go back in time again and talk in
20 some more detail about the referrals that you made to Sheldon
21 Silver. As an initial matter, since you were a treating
22 physician, why did you speak with your patients at all about
23 legal representation?

24 A. Because patients who were exposed to asbestos and who have
25 this disease, this is a devastating, horrible disease, the

FB45sil3

Taub - direct

1 treatments are very costly, and in order for a patient to cope
2 with this disease requires funding -- funds to help them and
3 this is part of their treatment, this is part of their care.

4 So, when a patient came to my office who I found out
5 or by history, or was obviously exposed to asbestos, one of the
6 things that I would ask is whether they had legal
7 representation so that they could get a settlement which would
8 help them cope with the illness.

9 Q. Dr. Taub, about how many new mesothelioma patients did you
10 see each month?

11 A. Zero to four.

12 Q. And when you spoke with your patients about legal
13 representation, did you ask if they already had a lawyer?

14 A. Yes.

15 Q. And about what percentage of the patients that came in
16 already had lawyers?

17 A. About two thirds.

18 Q. And if a patient already had a lawyer, did you attempt to
19 refer them to a law firm?

20 A. Not usually, because if they already had representation.

21 Q. So, how frequently did you have new mesothelioma patients
22 who did not already have legal representation?

23 A. I estimate about one in three.

24 Q. One in three per what?

25 A. One in three patients, new patients that I saw would not

FB45sil3

Taub - direct

1 have representation.

2 THE COURT: Is that about one a month?

3 THE WITNESS: I'm sorry?

4 THE COURT: Did that amount to one a month, one every
5 two months?

6 THE WITNESS: It could be three or four a year.

7 It was very, very sporadic.

8 BY MR. GOLDSTEIN:

9 Q. Could it also be more than three or four per year?

10 A. Could be. Depends on the year.

11 Q. Now, for those patients who did not already have a lawyer,
12 if you wanted to refer them to Sheldon Silver, what did you
13 tell them?

14 A. I told them that Weitz & Luxenberg is a very good law firm
15 and that Mr. Silver would and had, because of his stature in
16 the State and because he was a member of that law firm as well,
17 that it would enhance their legal treatment at the firm; they
18 would do better, they would have a good representation in the
19 firm.

20 Q. If a patient was receptive to that, what did you ask the
21 patient for?

22 A. I would ask the patient for contact information.

23 Q. Contact information for whom?

24 A. So that I could pass it along to Mr. Silver.

25 Q. Did you get their permission to send that information to

FB45sil3

Taub - direct

1 Mr. Silver?

2 A. Absolutely.

3 Q. Were there patients who did not give their permission?

4 A. Yes.

5 Q. If they did not give their permission, would you still send
6 their information to Mr. Silver?

7 A. No.

8 Q. Now, when you referred a patient to Sheldon Silver, did you
9 mention other law firms as well, or just Sheldon Silver and
10 Weitz & Luxenberg?

11 A. Occasionally I would mention other firms but mainly I would
12 mention Weitz & Luxenberg.

13 Q. You said that you got their name, their contact
14 information; how did you convey that information to Sheldon
15 Silver?

16 A. I called him.

17 Q. What number of Sheldon Silver's did you call?

18 A. I called his State office.

19 Q. Dr. Taub, how many cell phones do you have?

20 A. Two.

21 Q. And before your testimony today did you look in both of
22 your phones to see what contact information you had for Sheldon
23 Silver?

24 A. Yes.

25 Q. I want you to look in your binder at what's been marked for

FB45sil3

Taub - direct

1 identification as Government Exhibit 3538-14.

2 A. Yes.

3 Q. Prior to your testimony today, did you look through your
4 cell phones to see what contact information you had on your
5 phones for Sheldon Silver?

6 A. Yes.

7 Q. What was the number that you had for Sheldon Silver?

8 A. 212-312-1400.

9 Q. Is that the only number that you had for Sheldon Silver?

10 A. Yes.

11 Q. In either one of your phones?

12 A. Yes.

13 Q. Is it your understanding that that is the number of his
14 Assembly office?

15 A. Yes.

16 Q. Did you have a cell phone number for Sheldon Silver?

17 A. I did not.

18 Q. Did you know what his home phone number was?

19 A. I did not.

20 Q. Now, when you called his state office who, typically,
21 answered the phone when you called?

22 A. A receptionist or an administrative person.

23 Q. What, if anything, did you say to that secretary or
24 receptionist to get through to Silver?

25 A. I would say I would like to speak to Mr. Silver about a

FB45sil3

Taub - direct

1 referral.

2 Q. And what happened after you told that to the person who
3 answered the call?

4 A. Mr. Silver would call back.

5 Q. Did you provide any other detail to the receptionist
6 besides that you wanted to speak with Mr. Silver about a
7 referral?

8 A. Not usually.

9 Q. Do you recall ever providing additional detail to a
10 receptionist or a secretary in the office?

11 A. I think over the years, I think perhaps once when
12 Mr. Silver was totally not available and his secretary asked
13 that I provide her with the information. I'm not sure who it
14 was.

15 Q. And then when you did in fact speak with Sheldon Silver,
16 what information did you provide to him?

17 A. I provided him with the name and a contact phone number for
18 a prospective referral.

19 Q. And did you tell Silver that this was a patient of yours
20 who had recently been diagnosed with mesothelioma?

21 A. Yes.

22 Q. Did you give him any information about the potential
23 exposure to asbestos?

24 A. On some occasions I did do that, yes, that I can recall.

25 Q. What did Silver say to you after you provided him with this

FB45sil3

Taub - direct

1 information?

2 A. He generally thanks me for the referral.

3 Q. How long were these conversations that you had with Sheldon
4 Silver?

5 A. Generally brief.

6 Q. Now, after you first began referring cases to Sheldon
7 Silver, did there come a time when Sheldon Silver brought up
8 your friend Daniel Chill?

9 A. Yes.

10 Q. What did Silver say to you about Daniel Chill?

11 A. He said I should not tell Mr. Chill about any referrals --
12 any further referrals.

13 Q. What did you take that to mean?

14 A. I didn't know what to make of it, actually. He just wanted
15 it kept between me and Mr. Silver, between me and him.

16 Q. Approximately how early in the time period was this when
17 you were referring cases to Sheldon Silver did this request
18 come?

19 A. I'm really not sure. Fairly early.

20 Q. And after that request from Silver not to speak with
21 Mr. Chill about the referrals, did you ever raise the issue of
22 referrals again with Daniel Chill?

23 A. I don't think so.

24 Q. Why not?

25 A. Because Mr. Silver asked me not to and I felt that I would

FB45sil3

Taub - direct

1 honor that request. Why not.

2 Q. You testified earlier that after you began sending cases to
3 Silver you sent --

4 MR. COHEN: Your Honor, I am sure Mr. Goldstein means
5 to refer to Mr. Silver.

6 MR. GOLDSTEIN: I can refer to him as the defendant, I
7 can refer to him as Silver or Mr. Silver.

8 THE COURT: I'm not sure what the objection was.

9 MR. COHEN: He is calling him Silver. It is
10 Mr. Silver. It seems to me appropriate.

11 THE COURT: Okay. Go ahead.

12 BY MR. GOLDSTEIN:

13 Q. You testified earlier that after you began sending cases to
14 the defendant you sent him a letter asking about State funding
15 for your research program. Do you recall that?

16 A. Yes.

17 Q. Now, prior to your testimony here today, did you search
18 through the files on your home computer looking for documents
19 pertaining to Sheldon Silver?

20 A. Yes, I did.

21 Q. I want you to look in your binder at what's been marked for
22 identification as Government Exhibit 302.

23 A. 302?

24 THE COURT: 302.

25 Q. 302.

FB45sil3

Taub - direct

1 A. I don't see a 302.

2 THE COURT: It is right towards the front.

3 Q. It should be the third tab in the binder, Dr. Taub.

4 A. Yes, I have got it. Okay.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. What is it?

8 A. It is a letter that I drafted to Mr. Silver.

9 Q. Dr. Taub, when did you draft this document?

10 A. The date created was December 29th, 2003.

11 Q. What names did you reference in the file name for this
12 document?

13 A. The file name is a letter to Sheldon Silver via Danny
14 Chill, December 30 2003.doc. That's the file name.

15 Q. Dr. Taub, did you in fact also reference Daniel Chill in
16 this draft of the document?

17 A. Yes.

18 Q. You can set that aside.

19 If you can turn to what's been marked in your binder
20 as Government Exhibit 107-1?

21 MR. GOLDSTEIN: Your Honor, the government offers 302.

22 THE COURT: Any objection?

23 MR. MOLO: No objection.

24 THE COURT: 302 is received.

25 (Government's Exhibit 302 received in evidence)

FB45sil3

Taub - direct

1 BY MR. GOLDSTEIN:

2 Q. Dr. Taub if you can look at Government Exhibit 107-1?

3 Actually, can we publish 302, please? Mr. Coccoaro,
4 can you please focus in on the metadata at the top of the
5 document?

6 Dr. Taub, the file name, is that what you read to the
7 jury earlier?

8 A. Yes.

9 Q. And the date created, can you read that into the record,
10 please?

11 A. December 29th, 2003.

12 Q. Mr. Coccoaro, if we can turn to the first page of this
13 document and just focus in on the top, the letterhead and the
14 first few sentences?

15 Is that your letterhead, Dr. Taub?

16 A. Yes.

17 Q. What is the date of the letter?

18 A. The date is January 7, 2004.

19 Q. And can you please read for the jury the first line of the
20 letter?

21 A. It reads: I was gratified to learn from Mr. Daniel Chill
22 that our program in mesothelioma might be considered for
23 support through New York State.

24 Q. Did you in fact learn from Daniel Chill that your program
25 in mesothelioma might be considered for support through New

FB45sil3

Taub - direct

1 York State?

2 A. Yes.

3 Q. Now let's look at Government Exhibit 107-1 --

4 THE COURT: Before we do that, can I see the parties
5 for just a second?

FB45sil3

Taub - direct

1 (At side bar)

2 THE COURT: I just want to make sure I have got the
3 document right. So, this is the document as it appears which
4 attaches the Milstein Report. Is that how the document is
5 going into evidence?

6 MR. GOLDSTEIN: Yes, your Honor.

7 THE COURT: And on page 2 the metadata indicates it is
8 a letter to Milstein.

9 MR. GOLDSTEIN: It was a draft.

10 THE COURT: That's fine. I want to make sure that I
11 have the document correct.

12 MR. GOLDSTEIN: Yes.

13 THE COURT: Okay. That's all. I just wanted to make
14 sure there wasn't a SNAFU in copying.

FB45sil3

Taub - direct

1 (In open court)

2 BY MR. GOLDSTEIN:

3 Q. Dr. Taub, if you can now look in your binder to Government
4 Exhibit 107-1? Do you recognize that document?

5 A. Yes.

6 Q. What is that document?

7 A. That is a letter that I wrote to Mr. Silver.

8 Q. And if you could turn to the second page of the document,
9 is that your signature on the document?

10 A. Yes, it is.

11 MR. GOLDSTEIN: Your Honor, the government offers
12 107-1 which is a redacted version of 107 which is already
13 admitted into evidence.

14 THE COURT: Any objection?

15 MR. MOLO: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 107-1 received in evidence)

18 BY MR. GOLDSTEIN:

19 Q. If we can publish that, Mr. Coccaro? Mr. Coccaro, can we,
20 again, focus on the first part of the letter?

21 Dr. Taub, the address on the letter just says:
22 Honorable Sheldon Silver, Speaker, New York State Assembly,
23 with no mailing address. Do you recall how you transmitted
24 this letter to Sheldon Silver?

25 A. I don't really.

FB45sil3

Taub - direct

1 Q. What are the possible ways that you could have transmitted
2 it to him?

3 MR. MOLO: Objection.

4 THE COURT: Overruled.

5 A. I could have mailed it to his State office or I could have
6 given it to Mr. Chill.

7 Q. If you gave it to Mr. Chill, would that have been to give
8 to Mr. Silver?

9 A. Yes.

10 Q. If you can read the first line -- before I ask you that,
11 Dr. Taub, is this the final version of the letter that we
12 looked at the draft of earlier?

13 A. I believe so.

14 Q. Is this the one that you signed?

15 A. Yes.

16 Q. So, can you please read for the jury the first line of this
17 letter?

18 A. I am pleased to learn that our program in mesothelioma
19 might be considered for support through New York State.

20 Q. The previous version of the letter, the draft, said that
21 you had learned from Daniel Chill and his name was mentioned.
22 Why did you not mention him in the final version of the letter?

23 A. Because Mr. Chill asked me not to put his name in the
24 letter.

25 Q. If we can look at the rest of this paragraph? *There is an*

FB45sil3

Taub - direct

1 urgent need for better mesothelioma treatment for our citizens.
2 Mesothelioma and related cancers are responsible for thousands
3 of agonizing deaths each year, many arising from exposure to
4 asbestos in shipyards in our area or in regional towns with
5 asbestos insulation manufacturing plants. There has been an
6 influx of immigrants from Turkey and its neighbors that have
7 high levels of environmental asbestos and many potential
8 mesothelioma victims. In New York City, additional populations
9 may have been exposed to asbestos-laden air during the
10 September 11, 2001 terrorist attack on the World Trade Center,
11 in which the floor tiles are said to have contained asbestos.
12 The incidence of mesothelioma is still rising and is not
13 expected to peak until about 2020. There is currently no cure
14 for mesothelioma. Life expectancy after diagnosis is six to 12
15 months; this must improve.

16 What was your purpose in including this information in
17 the letter to Sheldon Silver?

18 A. This was important because we were interested to know if
19 New York State would be interested in supporting mesothelioma
20 research and this was a matter of some importance to the
21 citizens of New York State which made it relevant to ask the
22 legislature to support it.

23 Q. Did you consult with Daniel Chill on the language of this
24 letter?

25 MR. MOLO: Objection.

FB45sil3

Taub - direct

1 THE COURT: Overruled.

2 A. Yes, I did.

3 Q. Why did you consult with Daniel Chill on the language of
4 this letter?

5 A. Because the concept of asking the State for support arose
6 during conversations I had with Mr. Chill earlier, particularly
7 about --

8 Q. I don't want you to go into the nature of those
9 conversations, Dr. Taub.

10 A. Okay.

11 Q. But, did you turn to Mr. Chill, in part, because of his
12 knowledge of New York State government?

13 A. Certainly.

14 Q. If I can direct your attention to the second page of the
15 letter and we could enlarge the "I wish to propose" paragraph,
16 Mr. Coccaro?

17 *I wish to propose that the state New York appropriate*
18 *\$250,000 yearly for comprehensive support of ongoing*
19 *mesothelioma research at the only university-designated,*
20 *hospital-affiliated mesothelioma center in our area.*

21 Why did you ask for \$250,000 per year?

22 A. That was an amount, I believe, that was suggested by
23 Mr. Chill, but it was also an amount that I would traditionally
24 use for research proposals.

25 Q. And what did you want to do with the state money if you got

FB45sil3

Taub - direct

1 it?

2 A. What we wanted to do was to develop clinical programs and
3 clinical trials and investigative trials to determine asbestos
4 exposure in people with mesothelioma.

5 Q. And how important to the Mesothelioma Center was it to get
6 state funding?

7 A. It's always good to get funds. The center was pretty well
8 funded at that time so it was not crucial, but the more money
9 you get for research the more research you can do. So, it is
10 helpful.

11 Q. Was there a benefit to receiving money from the state in
12 particular as compared to a private source?

13 A. Yes.

14 Q. What was that benefit?

15 A. Well, usually funds from the government have been vetted
16 and have been given and the perception is that those funds are
17 given on merit. So, it's meritorious and it is a plus for your
18 reputation to have funds which were given to you on merit, that
19 means people evaluated your research and found it was good.
20 And we thought our program was excellent.

21 Q. What was your understanding as to what was going to happen
22 after you sent this letter to Sheldon Silver?

23 A. I assumed that the funds would be sent to the Department of
24 Health and they would --

25 Q. Doctor, let me just stop you there.

FB45sil3

Taub - direct

1 A. -- that the proposal --

2 Q. What did you think was going to be transmitted to the
3 Department of Health?

4 A. The proposal. The proposal was going to be transmitted to
5 the Department of Health for their evaluation and they may then
6 have contacted me for further discussions.

7 Q. Now, after you sent this letter to Sheldon Silver, did you
8 refer additional cases to Silver?

9 A. Yes.

10 Q. What did you hope the effect would be of referring those
11 additional cases to Silver?

12 A. I wanted to maintain the relationship where he would be an
13 advocate and he would be incentivized to help fund mesothelioma
14 research.

15 Q. Did you hope that it would help with the grant?

16 A. It might. Sure.

17 Q. Now, you testified earlier that you had other experiences
18 in your career in applying for grant funding from the
19 government. Based on that experience, what kind of review did
20 you expect this request for funding to receive?

21 MR. MOLO: Objection, your Honor. It was a federal
22 grant, this is a state grant.

23 THE COURT: Overruled.

24 A. I had received federal funding for 25 years from the
25 government and from other foundations. It's always been on

FB45sil3

Taub - direct

1 merit and peer review.

2 Q. Now, you also testified that your program in mesothelioma
3 has received gifts from donors and from foundations and
4 lawyers. What's the difference between a gift and a grant?

5 A. A gift is a person who has money or a foundation that has
6 money and they wish to donate it. They will donate it if they
7 feel it's appropriate. Money given by a government is public
8 money and public money has to be allocated by a process which
9 is fair to the people and a -- which should be given
10 impartially by a process which is either peer-reviewed or
11 certainly on merit, should be given on merit.

12 Q. In your experience, do government entities give gifts or do
13 they give grants?

14 A. Government entities do not give donations, they give
15 grants.

16 Q. And which government entity did you expect would review
17 your request for funding that you sent to Sheldon Silver?

18 A. The Department of Health, New York State.

19 Q. How long did you think that review process would take?

20 A. Ordinarily those grants are reviewed within about six
21 months.

22 Q. What was your objective in sending that letter to Sheldon
23 Silver directly as opposed to the Department of Health?

24 A. I was asked to send a letter to Mr. Silver. I thought he
25 would pass it along to the Department of Health and they would

FB45sil3

Taub - direct

1 take it in a certain sense from there if they thought -- if
2 they thought that our center was worth supporting.

3 Q. Did you want Sheldon Silver to help you with the process?

4 A. Yes.

5 Q. Is that one reason why you sent him cases?

6 A. I, among other things, I wanted him to help, help fund
7 mesothelioma research. Within that general category, yes.

8 Q. After you sent that letter to Sheldon Silver, for the first
9 several months did you receive any response?

10 A. I did not.

11 Q. Did there come a time when you received an invitation to
12 attend an event in Albany for Sheldon Silver?

13 A. Yes.

14 Q. What was that event?

15 A. His inauguration as Speaker.

16 Q. Was that his first inauguration as Speaker?

17 A. I don't believe so.

18 Q. And approximately when was this inauguration to be?

19 A. I think 2004. Late 2004.

20 Q. Where did the invitation to the event come from?

21 A. From the Speaker's office in Albany.

22 Q. Did you in fact go?

23 A. Yes.

24 Q. Who did you go with?

25 A. I went with Mr. Chill.

FB45sil3

Taub - direct

1 Q. And at this inauguration did you meet with Sheldon Silver?

2 A. Yes.

3 Q. Did you meet with him by yourself or in a group?

4 A. I think it was in a group.

5 Q. And to what extent, if any, do you recall discussing your
6 grant request with Silver?

7 A. I think it was discussed briefly. Very briefly.

8 Q. And did Silver also introduce you to someone on his staff?

9 A. I believe so.

10 Q. And did you then speak with that staff member?

11 A. Yes.

12 Q. And based on that discussion, what was your impression
13 about the status of your grant request?

14 A. That it was being actively considered for funding.

15 Q. Now, after that inauguration, did you write a second letter
16 to Sheldon Silver?

17 A. Yes.

18 Q. If you can look in your binder at Government Exhibit 303,
19 do you recognize this document, Dr. Taub?

20 A. Yes.

21 Q. What is this document?

22 A. This is a letter that I wrote to Mr. Silver in January of
23 2005.

24 Q. Is this one of the documents that you found on your home
25 computer when you were looking for files relating to Sheldon

FB45sil3

Taub - direct

1 Silver?

2 A. Yes.

3 MR. GOLDSTEIN: Your Honor, the government offers 303.

4 THE COURT: Any objection?

5 MR. MOLO: No objection.

6 THE COURT: 303 is received.

7 (Government's Exhibit 303 received in evidence)

8 BY MR. GOLDSTEIN:

9 Q. Mr. Coccaro, can we publish the metadata on the first page
10 of this document? Can you zoom in on the metadata so that the
11 jury can read it?

12 Dr. Taub, what was the file name of this document?

13 A. Letter to Sheldon Silver January 102005.

14 Q. And what was the date that it was created?

15 A. January 9th, 2005.

16 Q. If we can turn to the first page of the letter and just
17 zoom in on the top part of that, Mr. Coccaro?

18 Now, the date on the letter here says January 7, 2004.
19 Is that the correct date where you drafted the letter?

20 A. It's a typographical error, it should have been 2005.

21 Q. How do you know that?

22 A. Well, the other pages are marked 2005 and also it says:
23 Congratulations upon your re-election as Speaker, which did not
24 happen in 2004.

25 Q. Did you draft this letter after you went to the

FB45sil3

Taub - direct

1 inauguration?

2 A. Yes.

3 Q. If we can just look at the top of the second page of this
4 letter, the top of the second page, Mr. Coccoaro?

5 Can you see that says: Letter to Honorable Sheldon
6 Silver, January 12, 2005?

7 A. Yes.

8 Q. So, let's, if you can turn in your binder to Government
9 Exhibit 108-1; do you recognize that document?

10 A. Yes.

11 Q. If you would turn to the second page of that document; is
12 that your signature?

13 A. Yes.

14 Q. Is this the final, signed version of the document, the
15 draft of which we just looked at?

16 A. Yes.

17 MR. GOLDSTEIN: Your Honor, the government offers
18 108-1.

19 MR. MOLO: No objection.

20 THE COURT: All right. 108-1 -- 108-1 or 108?

21 MR. GOLDSTEIN: 108-1, your Honor, because this has
22 redactions.

23 THE COURT: 108-1 is received.

24 (Government's Exhibit 108-1 received in evidence)

25 BY MR. GOLDSTEIN:

FB45sil3

Taub - direct

1 Q. If we can publish the first part of this, Mr. Coccoaro.

2 Who did you address this letter to, Dr. Taub?

3 A. To Mr. Silver's State Assembly office.

4 Q. 250 Broadway?

5 A. Yes.

6 Q. Again, the letter says January 7, 2004; what was the
7 correct year, Dr. Taub?

8 A. 2005.

9 Q. Mr. Coccoaro, if you can scroll down to the top part of the
10 first paragraph?

11 It says: I was gratified to learn that our program in
12 mesothelioma would be considered this year for support by New
13 York State.

14 How did you know that your program would be considered
15 this year for support by New York State?

16 A. I believe I was told that by Mr. Silver's associate.

17 MR. MOLO: Objection. I'm sorry.

18 THE COURT: He was told that by an associate.
19 Overruled.

20 MR. MOLO: I'm sorry.

21 Q. If I can direct your attention to the last paragraph on the
22 first page of this letter starting with the sentence: *I wish*
23 *to request that the legislature consider supporting this*
24 *program* --

25 THE COURT: It should be on your screen as well,

FB45sil3

Taub - direct

1 Dr. Taub.

2 A. Okay, yes. Okay. I see it.

3 Q. Thank you.

4 *I wish to request that the legislature consider*
5 *supporting this program in the amount of \$250,000 for this*
6 *budget year, to be renewed annually, for an additional three*
7 *years.*

8 How much total funding were you asking the state to
9 provide over a four-year period?

10 A. I was hoping for about \$1 million.

11 Q. And if we could look at the bottom of the second page, the
12 signature and the cc line, you cc'd Dr. Herbert Pardes and
13 Ms. Lynn Roth. Who is Dr. Herbert Pardes?

14 A. Dr. Herbert Pardes was the President and Chief Executive
15 Officer of the New York Presbyterian Hospital. He had
16 previously been dean of the medical school.

17 Q. Who was Lynn Roth?

18 A. Lynn Roth was the director of development. She oversaw
19 gifts and grants to the hospital.

20 Q. And why did you cc them on this letter?

21 A. Because I had discussed the program with them and explained
22 to them that funding from New York State for these kinds of
23 programs would bring good publicity to the Presbyterian
24 Hospital; and they were supportive of it.

25 Q. Had you discussed with Dr. Pardes that you had referred or

FB45sil3

Taub - direct

1 were referring cases to Mr. Silver?

2 A. No.

3 Q. Did you discuss with Mrs. Roth that you had referred or
4 were referring cases to Mr. Silver?

5 A. I did not.

6 Q. Did you discuss that with anyone in the administration at
7 either Columbia or New York Presbyterian?

8 A. I did not.

9 Q. Dr. Taub, if you can look in your binder at Government
10 Exhibit 304 marked for identification? Do you recognize this
11 document?

12 A. Yes.

13 Q. Was this a document that you found while looking through
14 your files?

15 A. Yes, it is.

16 Q. And what is this document?

17 A. This is a memo that I received, by fax, from Mr. August.

18 MR. GOLDSTEIN: Your Honor, the government offers 304.

19 THE COURT: Any objection?

20 MR. MOLO: No objection.

21 THE COURT: 304 is received.

22 (Government's Exhibit 304 received in evidence)

23 BY MR. GOLDSTEIN:

24 Q. Can we publish 304, please?

25 Looking at the top, when did you receive -- is this a

FB45sil3

Taub - direct

1 fax, Dr. Taub?

2 A. Yes.

3 Q. What is the date that you received this fax?

4 A. June 9th, 2005.

5 Q. And who is the fax from?

6 A. Mr. Steve August.

7 Q. What was your understanding as to who Steve August was?

8 A. I understood that he was an associate of Mr. Silver's.

9 Q. In the New York State government?

10 A. Yes.

11 Q. The fax has a comments section, can we highlight the
12 comments section?

13 *Please comment on whether the attached is appropriate*
14 *to your proposal and is sufficiently inclusive of what you may*
15 *want to do with the funding. My e-mail is*
16 *AugustS@assembly.state.NY.U.S.*

17 If we can look at the attached, the second page and
18 let's enlarge that, Mr. Coccaro?

19 Dr. Taub, did you draft this language?

20 A. I did not.

21 Q. Let's look at the first line: *Funds will be used for*
22 *expenses of research into the clinical diagnosis and treatment*
23 *of mesothelioma and related cancers, and study of the*
24 *occurrences of such cancers in individuals exposed to asbestos*
25 *and other materials released into the air during the attacks of*

FB45sil3

Taub - direct

1 *September 11, 2001.*

2 Was that language an accurate description of what you
3 intended to do with the funding?

4 A. Generally, yes.

5 Q. Again, was that your language?

6 A. No.

7 MR. MOLO: Objection. Asked and answered.

8 THE COURT: Overruled.

9 Q. And the second sentence says: *Services may include*
10 *education and outreach to residents and workers in Lower*
11 *Manhattan who may be at risk of mesothelioma and other cancers*
12 *because of such exposure.*

13 Was that an accurate description of the work that you
14 planned to do with the funding?

15 A. Not immediately, but it was certainly a possibility.

16 Q. Do you recall how you responded to Steve August after you
17 received this?

18 A. I don't recall. But, I think I spoke to him but I don't
19 recall. I don't have any good memory of it.

20 Q. With regard to education and outreach relating to September
21 11th, why was that something that you were envisioning could be
22 done in the future but not in 2005 or 2006?

23 MR. MOLO: Objection. That's not been the testimony.

24 THE COURT: He said he -- rephrase the question.

25 Q. Dr. Taub, I'm going to rephrase the question.

FB45sil3

Taub - direct

1 A. Okay.

2 Q. You testified that education and outreach is something that
3 you considered to do in the future but were not going to do at
4 this time. Why was that?

5 A. We did not -- we were just beginning to acquire personnel
6 and expertise in that area so we were not ready to do that but
7 we were ready to do what we would do additionally about the
8 clinical diagnosis and treatment.

9 Q. To what extent at this time, in 2005 and 2006, were you
10 aware of actual cases of mesothelioma connected to 9/11?

11 A. I did not expect any cases of mesothelioma to come from
12 9/11 until about 10 to 15 years had passed.

13 Q. Why is that?

14 A. Because there is an average duration that we know of about
15 30 years, 32 years between the time of exposure to asbestos and
16 the time you develop mesothelioma that's diagnosed. The
17 possibility existed that with 9/11 that may have been shorter
18 because of the tremendous intense exposure to asbestos and
19 other materials at the same time, so that was a possibility.
20 But I did not expect cases to, say, to occur within a year or
21 two.

22 Q. So, was the research that you intended to do with this
23 state funding limited to asbestos that was directly connected
24 to 9/11?

25 A. No, it was not necessarily connected to 9/11 because the

FB45sil3

Taub - direct

1 patients with 9/11 who were going to come were going to come
2 later, but in order to be prepared for them you would need to
3 do research in order to know how to treat them. So, I think it
4 is important that that research be funded generally about
5 mesothelioma, which was the purpose of the funds.

6 (Continued on next page)

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FB4YSIL4

Taub - Direct

1 BY MR. GOLDSTEIN:

2 Q. Now, soon after you received this fax from Steve August
3 with the description of the potential uses of the grant, did
4 your program receive notice that it was going to get a grant
5 from New York State?

6 A. Yes.

7 Q. If you can turn in your binder to Government Exhibit 320.

8 Dr. Taub, do you recognize this document?

9 A. Yes.

10 Q. What is this document?

11 A. This is a notification from the Department of Health of the
12 State of New York that we are the recipient of a Health Care
13 Reform Act grant.

14 MR. GOLDSTEIN: Your Honor, the government offers
15 Government Exhibit 320.

16 MR. SHUR: No objection.

17 THE COURT: Okay. Government Exhibit 320 is received.

18 (Government's Exhibit 320 received in evidence)

19 BY MR. GOLDSTEIN:

20 Q. If we can look at the top portion of the document up
21 through the first sentence.

22 Dr. Taub, which government agency did you receive this
23 notice of award from?

24 A. The New York State Department of Health.

25 Q. Prior to receiving this letter, had you had any contact

FB4YSIL4

Taub - Direct

1 with the New York State Department of Health?

2 A. No.

3 Q. The first line of the letter says, "The purpose of this
4 letter is to advise that your organization is the recipient of
5 a 2002 Health Care Reform Act grant in the amount of \$250,000
6 from the New York State Assembly allotment in the Health Care
7 Initiatives Pool."

8 What, if anything, did you know about the 2002 Health
9 Care Reform Act?

10 A. Nothing.

11 Q. What, if anything, did you know about the Health Care
12 Initiatives Pool?

13 A. Nothing.

14 MR. GOLDSTEIN: Mr. Coccaro, if we would look at the
15 signature lines on this letter.

16 BY MR. GOLDSTEIN:

17 Q. Who signed this document, Dr. Taub?

18 A. It is signed by a Robert W. Reed.

19 Q. Have you ever spoken with Robert W. Reed?

20 A. No.

21 Q. It's cc'd to a Dennis Whalen.

22 Had you ever spoken with Dennis Whalen?

23 A. I have not.

24 Q. Do you know who Dennis Whalen was?

25 A. I don't.

FB4YSIL4

Taub - Direct

1 Q. Do you see the name Mark Van Guysling? Have you ever
2 spoken with Mark Van Guysling?

3 A. I have not.

4 Q. Did you know who he was?

5 A. No.

6 Q. Once your program received the grant, what did you end up
7 using the money for?

8 A. We used it for studies of mesothelioma pathogenesis and to
9 help fund clinical trials.

10 Q. And for how long of a period of time did the grant fund
11 those expenses?

12 A. For one year. The second one was given later.

13 Q. What expectation, if any, did you have that you could get a
14 second grant?

15 A. I had hoped that we could.

16 Q. To what extent, if any, was your compensation at Columbia
17 affected by receiving this grant from the state?

18 A. I'm sorry. I don't understand the question.

19 Q. To what extent, if any, was your financial compensation
20 from Columbia affected by the fact that you received this grant
21 or your program received in grant from New York State?

22 A. My personal compensation?

23 Q. Correct.

24 A. It was not affected.

25 Q. Who pays your salary?

FB4YSIL4

Taub - Direct

1 A. Columbia University.

2 Q. Is your salary contingent on your ability to raise money?

3 A. It is not.

4 Q. Is there an expectation from Columbia that you need to
5 raise money over time?

6 A. There might well be. I don't know.

7 Q. Now, after you received this first grant, how often, if
8 ever, did Sheldon Silver ask for reports from you about the
9 status of your research?

10 A. I don't believe he did ask for a status report.

11 Q. How often, if ever, did Silver invite you to explain to the
12 Department of Health what you were doing with your research?

13 A. He had not.

14 Q. How often, if ever, did Silver invite you to explain to
15 anyone in state government about the status or the progress of
16 your research?

17 A. He had not.

18 Q. And how often, if ever, did Silver ask you about the extent
19 to which you were doing outreach or education to people exposed
20 to asbestos in the 9/11 attacks?

21 A. He did not.

22 MR. GOLDSTEIN: Your Honor, I don't know if this is a
23 good time for lunch, a breaking point. Or I can continue.

24 THE COURT: We'll check. We'll go ahead and break for
25 lunch.

FB4YSIL4

Taub - Direct

1 Ladies and gentlemen, if you want to check your phones
2 over the lunch hour, that's fine. I'm going to ask you to do
3 it at the beginning of the lunch hour so that you're back in
4 the room ready to go when the lunch hour is over.

5 The second thing that came up this morning is there
6 were some early birds who made it into the cafeteria in this
7 building. I'm going to ask you not to go to the cafeteria in
8 this building. It's going to increase the likelihood that
9 you're going to run into lawyers or witnesses in this case.

10 There is a lovely cafeteria, however, across the
11 street in the other courthouse, the courthouse that you started
12 your jury duty in. It's up on the 8th floor. It has nice
13 views. The food is better over there.

14 So, if you want to come early and get breakfast on
15 your own, go to the courthouse across the street, but you still
16 have to be here at 9:15. So enjoy your lunch. We'll bring you
17 back into the courtroom in about an hour. Don't discuss the
18 case.

19 (Jury not present)

20 THE COURT: It seems to me we have two issues that
21 probably need to be taken up at the lunch hour.

22 Mr. Molo, you want me to order the government to turn
23 over drafts.

24 MR. MOLO: It's a little bit more complex than that.
25 It's clear to us from the communication that we've had with the

FB4YSIL4

Taub - Direct

1 government and, frankly, with Dr. Taub's counsel, that there
2 were drafts prepared of the cooperation agreement.

3 This cooperation agreement is unlike, frankly, any
4 I've seen, perhaps any the Court has seen, in that there is
5 sort of a recital of a factual basis in this that is much more
6 detail than you would typically say.

7 It is our belief that this language was negotiated and
8 that at times the language in these drafts will show that it
9 was a more severe or onerous recitation of facts; that the
10 witness' counsel pushed back on that, and that, in fact, there
11 are things that this witness has effectively said he did not do
12 that the government was attempting to include in the agreement,
13 which were, in fact, inculpatory.

14 Under the Stein case, which we cite in our papers,
15 we're clearly entitled to this. So we'd ask for it.

16 THE COURT: I'm trying to think -- so if the
17 government thinks Dr. Taub did acts and Dr. Taub doesn't, says,
18 I didn't do acts, how -- I'll hear from the government.

19 MR. GOLDSTEIN: Thank you, your Honor. The government
20 has been very careful and in fact has intended to disclose as
21 much as possible about any communications with Dr. Taub that
22 we've had and communications with Dr. Taub's counsel about any
23 statement that Dr. Taub has made either to us or through
24 counsel.

25 All of that has been provided to the defense. We've

FB4YSIL4

Taub - Direct

1 reviewed the communications relating to the nonprosecution
2 agreement. We're prepared to give them to your Honor for an
3 in-camera review if your Honor would like it.

4 In our view, none of those communications contain any
5 statements of Dr. Taub that are in any way different than what
6 the defense already has.

7 THE COURT: That would just say they're not 3500
8 material. They're not Brady if they're the same as what
9 they've already got. I guess the question is could it somehow
10 be used to impeach him.

11 Am I getting your drift, Mr. Molo?

12 MR. MOLO: That, and to the extent it is not the same
13 and it could be Brady because that's what the issue was --

14 THE COURT: Forget the KPMG case. That was a little
15 different. Tell me what you're -- I'm trying to understand
16 what you're looking for. What nugget do you think you're going
17 to get in a draft cooperation agreement -- a draft nonpros
18 agreement that was not signed? So it does not govern
19 Dr. Taub's agreement with the government.

20 MR. MOLO: I think that it is certainly possible --
21 and I have a strong reason to believe that there does exist
22 some kind of draft language, whether it's a draft wording in an
23 email, whether it's an actual draft of the letter, whatever it
24 may be -- that tends to paint Dr. Taub's relationship with
25 Mr. Silver in a far more sinister and culpable light than that

FB4YSIL4

Taub - Direct

1 which is contained in the current cooperation agreement.

2 THE COURT: How is that helpful to the defense?

3 MR. MOLO: Because Dr. Taub pushed back on it and
4 would not agree that he engaged in what effectively is a
5 criminal conspiracy.

6 THE COURT: His opinion about what it was is neither
7 here nor there. You can't prove your guy is innocent because
8 somebody else thinks he's innocent.

9 MR. MOLO: He's the person that's supposedly paying
10 bribes to Mr. Silver, as I've heard the testimony today, by
11 sending these referrals in exchange for these grants.

12 If he says, no. I didn't do that or I'm not going to
13 agree to that in an agreement that says that, I'm entitled to
14 that. I'm entitled to that as Brady. I'm also entitled to
15 that generally as impeachment material. It's probably also
16 Giglio material in some fashion.

17 THE COURT: If his testimony here is inconsistent with
18 the letter. It sounds to me like you're suggesting it would be
19 consistent with perhaps more express language than was used
20 previously in the nonpros.

21 The government has offered them to me. I'll take a
22 look at them. I have to say I don't quite understand your
23 theory how it is helpful -- put aside whether it is helpful in
24 the sense that you may be able to use it to dirty up the
25 government, which is kind of what it sounds like you want to

FB4YSIL4

Taub - Direct

1 use it for, which is not the purpose of Giglio and Brady.

2 MR. MOLO: I agree. I think Judge Kaplan's decision
3 in Stein is informative. I think the point is he has clearly
4 said that there are certain things -- my surmise is that this
5 language, again, is far more inculpatory than what was included
6 in this letter.

7 THE COURT: But my problem with your theory is let's
8 assume that's true.

9 MR. MOLO: Okay.

10 THE COURT: I'm not saying it is true, but let's
11 assume it's true. How is that Giglio? How does that tend to
12 inculcate Taub, and how does it help your client?

13 MR. MOLO: It helps me client, I believe, again --

14 THE COURT: Beyond just dirtying up somehow, sort of
15 feeding into your argument that somehow or another the
16 prosecutors have a more devious and evil view of your client
17 than Dr. Taub does.

18 MR. MOLO: It's not a more devious and evil view that
19 the prosecutors have. It's the fact that there was a
20 recitation of the events which Dr. Taub says clearly did not
21 happen.

22 That's what I believe. So, in other words --

23 THE COURT: Let's assume that's true. Let's say in
24 addition to the four things that they have agreed not to
25 prosecute him for, in addition to that, he killed a cat. That

FB4YSIL4

Taub - Direct

1 didn't make it into the nonpros, just to keep this away from
2 Mr. Silver.

3 So what? How does that tend to inculcate?

4 MR. MOLO: Assuming that they tried to get him to say
5 that he had engaged in a criminal agreement, a criminal
6 conspiracy --

7 THE COURT: To kill the cat?

8 MR. MOLO: Well, to kill the cat or to pay bribes more
9 specifically, and he said, no, I didn't.

10 THE COURT: And he didn't testify that he did.

11 MR. MOLO: Well, I --

12 THE COURT: I'm still struggling for how a proposed
13 statement in a nonpros agreement that he says, I didn't do
14 that. He said that then, and he did not testify to it just
15 now.

16 How are you going to use that to impeach him?

17 MR. MOLO: First of all, his testimony is not over.
18 Secondly --

19 THE COURT: Fair enough.

20 MR. MOLO: Secondly, we're faced with -- I'm not
21 complaining here. I'm talking about the reality of a highly
22 unusual situation where the government's main cooperating
23 witness has not given testimony to the grand jury.

24 THE COURT: I've heard all this before.

25 MR. MOLO: I'm not telling you that to complain to

FB4YSIL4

Taub - Direct

1 you. I'm explaining the realities, Judge, that in terms of
2 impeaching this witness, I'm left with eight sets of
3 handwritten notes and a half a page in the morning that they
4 woke him up at 6:00 in the morning and knocked on his door.
5 That's the only typed thing I've got.

6 If this is there, it will shed some light. We're not
7 talking about some onerous production. We're not talking about
8 the change in the U.S. Attorney's policy.

9 We're talking about them turning over a page or two or
10 three, whatever it may be. For this case to ask for that I
11 don't think is all that much.

12 THE COURT: I'm going to review it. I don't think the
13 rules on Brady and Giglio change because the government decided
14 not to put him before the grand jury and used investigators
15 that don't write 302s rather than the FBI. I understand your
16 frustration.

17 MR. MOLO: I'm talking about the reality of what I'm
18 faced with here. This is material, as Judge Kaplan said, could
19 be relevant. Thank you.

20 THE COURT: I'll take a look.

21 MR. MOLO: Thank you.

22 MR. GOLDSTEIN: Just to be clear, what we'll provide
23 to you is all of the communications that we were able to find
24 between the government and counsel to Dr. Taub relating to the
25 nonprosecution agreement.

FB4YSIL4

Taub - Direct

1 THE COURT: Are there actual prior drafts of the
2 nonpros agreement?

3 MR. GOLDSTEIN: There is a prior draft that was sent
4 from counsel, and there's some email back and forth.

5 THE COURT: Thank you.

6 MR. MOLO: My learned colleague, Mr. Cohen, reminded
7 me --

8 THE COURT: You let him talk?

9 MR. MOLO: Every once in a while. We keep him on a
10 short leash. He did a wonderful job cross-examining a witness.

11 -- to the extent that Dr. Taub or those drafts try to
12 say that Dr. Taub is saying something that Mr. Silver did or
13 said, that would be relevant, and he refused to say that.

14 THE COURT: I'm going to review them because I don't
15 want to fight over the relevance of a theory that you have of
16 why they're relevant that I don't understand if it's not even
17 in here.

18 MR. MOLO: I don't know what's in there. I agree.

19 THE COURT: Then we're just wasting time.

20 Do the parties want to be heard on juror number 4?

21 MR. MOLO: Could we do this right -- so I have an
22 opportunity to consult with my client? We haven't really had
23 time.

24 THE COURT: Absolutely. Okay.

25 MS. COHEN: Thank you, your Honor.

FB4YSIL4

Taub - Direct

1 THE COURT: I'll see you again at 1:40.

2 MS. COHEN: Thank you, your Honor.

3 (Luncheon recess)

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FB4YSIL4

Taub - Direct

AFTERNOON SESSION

1:45 p.m.

THE COURT: Are we ready?

MS. COHEN: The government is ready, your Honor.

THE COURT: How much longer is your direct,
Mr. Goldstein?

MR. GOLDSTEIN: Two to three hours, your Honor.

THE COURT: I think I'm going to defer the issue of
the documents because we've got time to deal with it. I think
I'm going to need an ex parte conversation because I need to
better understand the documents that I was given.

In fact, one of the documents I was given I believe
was a mistake because it is the nonpros agreement from the
Marmato trial.

MR. GOLDSTEIN: That was attached to an email.

THE COURT: This was an attachment to show this is
what our form nonpros is?

MR. GOLDSTEIN: Correct, your Honor.

THE COURT: Or something along those lines. Okay. I
thought maybe it was a stray document that showed up.

Anything else before we bring the jury out?

MS. COHEN: Not from the government, your Honor.

THE COURT: Mr. Molo?

MR. MOLO: Nothing, your Honor.

(Jury present)

FB4YSIL4

Taub - Direct

1 THE COURT: Dr. Taub, you're still under oath.

2 Mr. Goldstein.

3 BY MR. GOLDSTEIN:

4 Q. Dr. Taub, if you could move the microphone back in front of
5 you.

6 Dr. Taub, before lunch, you testified about this first
7 state grant that you received from New York State.

8 Do you recall that?

9 A. Yes.

10 Q. Did there come a time after you received that first grant
11 that you informed Sheldon Silver about a conference at
12 Mount Sinai Medical School?

13 A. Yes.

14 Q. Mount Sinai.

15 A. Yes.

16 Q. I want you to look in your binder at Government Exhibit
17 321.

18 A. Okay.

19 Q. Do you recognize that document, Dr. Taub?

20 A. Yes.

21 Q. What is that document?

22 A. Well, it's a letter I wrote to Mr. Silver.

23 Q. What was the general subject matter of the letter?

24 A. The subject matter of the letter was that there was an
25 asbestos awareness day presentation being hosted by the

FB4YSIL4

Taub - Direct

1 American Asbestos Awareness Organization, but it was at Mount
2 Sinai.

3 MR. GOLDSTEIN: Your Honor, the government offers 321.

4 THE COURT: Okay. 321 is received.

5 (Government's Exhibit 321 received in evidence)

6 MR. GOLDSTEIN: If we could publish that, Mr. Coccaro.

7 If we could, again, enlarge the top part of the
8 letter, Mr. Coccaro.

9 BY MR. GOLDSTEIN:

10 Q. Dr. Taub, what was asbestos awareness day?

11 A. This was a day that was sponsored by this organization to
12 raise people's consciences about the dangers of asbestos in
13 relation to a host of human diseases.

14 Q. Why was this conference at Mount Sinai?

15 A. It was at Mount Sinai because Mount Sinai was one of the
16 first places where the dangers of asbestos were first exposed.
17 There was a famous doctor there who did this named Selikoff.

18 Q. Are you familiar with Dr. Philip Landrigan?

19 A. Yes.

20 Q. Who was Dr. Landrigan?

21 A. Dr. Landrigan is an occupational medicine physician who
22 carries on some of the work of Dr. Selikoff and is a very good
23 epidemiologist and was one of the hosts for this asbestos
24 awareness day.

25 Q. What kind of research are you aware of that Dr. Landrigan

FB4YSIL4

Taub - Direct

1 does with relation to asbestos exposure and 9/11?

2 A. Occupational medicine is what he does and epidemiology,
3 which means he studies various cases of the disease and looks
4 around to see which of the patients were exposed to asbestos.

5 He takes a history from the patients and knows who was
6 exposed to asbestos and then decides what the dangers are.

7 Q. Is he a prominent doctor in this field?

8 A. Yes, he is.

9 Q. I'd like to call your attention to the fourth paragraph of
10 the letter -- the fifth paragraph of the letter beginning with,
11 "One of the session topics."

12 It says, "One of the session topics will be devoted to
13 national and global legislation related to asbestos and its
14 victims. Because of your expressed interest in this topic,"
15 Dr. Taub, before I continue to read, who was this letter
16 addressed to?

17 A. Mr. Silver.

18 Q. So, "Because of your expressed interests in this topic,
19 especially related to those in your own congressional district,
20 I thought it appropriate to ask if someone from your office
21 would wish to address us briefly on this or a closely-related
22 topic."

23 Other than the fact that your first grant had been
24 funded, how had Sheldon Silver expressed interest in this
25 topic?

FB4YSIL4

Taub - Direct

1 A. Well, I think he expressed interest in this topic by asking
2 me to write a letter to him about it, and he certainly would be
3 interested on that basis.

4 Q. Are you referring to the request for you to write a letter,
5 the first letter that you made to Mr. Silver for money?

6 A. Well, but before that, I had asked whether or not New York
7 State would be interested in supporting mesothelioma research,
8 and that was the response I got from Mr. Silver.

9 Q. Did you end up attending this event at Mount Sinai?

10 A. It was on the Jewish Sabbath, and I could not attend.

11 Q. Did Silver attend?

12 A. I don't believe so. He's orthodox as well.

13 Q. Did anyone from Silver's office attend?

14 A. I don't believe so. I don't know.

15 Q. If you could look at the next document in your binder,
16 Government Exhibit 581, marked for identification.

17 Do you recognize this document?

18 A. Yes.

19 Q. Is this one of the documents you found on your home
20 computer?

21 A. Yes, it is.

22 MR. GOLDSTEIN: Your Honor, the government offers
23 Government Exhibit 581.

24 THE COURT: Any objection?

25 Are you withdrawing it?

FB4YSIL4

Taub - Direct

1 MR. GOLDSTEIN: I'm going to withdraw the request for
2 admission.

3 THE COURT: Okay.

4 BY MR. GOLDSTEIN:

5 Q. Dr. Taub, after your research program received that first
6 two \$50,000 grant in 2005, did you seek additional state
7 funding for your research?

8 A. Yes.

9 Q. How did you go about seeking additional state funding?

10 A. I wrote a subsequent letter.

11 Q. Who did you write that subsequent letter to?

12 A. Mr. Silver.

13 Q. If you could look in your binder at Government Exhibit 120.

14 Do you recognize this document?

15 A. Yes.

16 Q. Is this one of the letters that you wrote to Sheldon
17 Silver?

18 A. Yes, it is.

19 Q. Is that your signature on the second page?

20 A. Yes, it is.

21 MR. GOLDSTEIN: Your Honor, the government offers 120.

22 THE COURT: I've got that 120 is already in evidence.

23 MR. GOLDSTEIN: Yes, your Honor. That's correct.

24 If we could publish this and zero in on the top part
25 of the letter.

FB4YSIL4

Taub - Direct

1 BY MR. GOLDSTEIN:

2 Q. What was the date of this letter, Dr. Taub?

3 A. October 11, 2006.

4 Q. I direct your attention to the first paragraph of the
5 letter, "I greatly appreciate the opportunity to once again
6 inform you of the current activities and accomplishments of our
7 mesothelioma center at Columbia University Medical Center. We
8 are most grateful that our program is being considered for
9 continuing support."

10 How did you get the understanding that your program
11 was being considered for continuing support?

12 A. I don't know. I don't recall.

13 Q. Who could you have gotten that understanding from?

14 A. Either from Mr. Silver or Mr. Chill.

15 THE COURT: Mr. Molo, is that an objection?

16 MR. MOLO: No. I'm sorry.

17 THE COURT: You just need to be louder if you're going
18 to object because it sort of just sounds like murmuring.

19 BY MR. GOLDSTEIN:

20 Q. I want to direct your attention to the second paragraph of
21 the letter. It starts off with, "I wrote to you in April
22 regarding the urgent, intense need for new treatments for
23 malignant mesothelioma."

24 Do you recall having written a previous letter to
25 Silver?

FB4YSIL4

Taub - Direct

1 A. At this moment, I'm not sure when, but I've written him a
2 number of letters. So I'm sure I did.

3 Q. This paragraph, if you review it -- it contains a more
4 detailed discussion of the relationship between mesothelioma
5 and the September 11 terrorist attacks.

6 What had happened between the time of the first
7 request for funding that you had made and this one?

8 A. There was a mesothelioma victim that had emerged who had
9 been exposed to asbestos at 9/11, which would upend the
10 previous dictum that you have to wait for 10 or 11 years before
11 a patient gets the disease. So that was an interesting find.

12 Q. If I can direct your attention to the second page of this
13 letter, the second paragraph, "As we wrote in April 2006, many
14 aspects of this program have been greatly aided by a grant from
15 New York State for which we are profoundly grateful and which
16 has helped lead to treatment breakthroughs in this disease.

17 "Our request is that the legislature continue its
18 annual support in the amount of \$250,000 for this budget year.
19 We also hope that the legislature can review our progress and
20 consider renewing the support in future years as well until
21 effective treatment is developed."

22 What was your objective in asking for continued
23 funding on an annual basis?

24 A. I was hoping to get it.

25 Q. If we can look at the paragraph starting with "The purposes

FB4YSIL4

Taub - Direct

1 of these funds."

2 "The purposes of these funds, as set forth in our
3 prior letter, would help our invaluable clinical trial
4 specialists, data managers, and physicians in training, all of
5 whom live within New York City, to remain here."

6 Is that what you wanted the grant money that you were
7 requesting to pay for?

8 A. Among other things, yes. As well as support and supplies
9 and ancillary things needed for research.

10 Q. The grant funding that you were asking for -- was it
11 specific to research relating to 9/11, or was it more general
12 for your center?

13 A. It was general for the center, and 9/11 served to highlight
14 the need but was not specifically related to 9/11 direct
15 research. Mesothelioma was a more general problem.

16 Q. Now, when you sent this letter seeking an additional
17 \$250,000 annually, did you continue to send cases to Sheldon
18 Silver?

19 A. Yes.

20 Q. Why did you continue to send him cases?

21 A. I wished to keep the relationship strong, and I wished him
22 to continue being an advocate for mesothelioma, and I wished
23 him to continue, if he could, to help us raise funds for it.

24 Q. Did your program, in fact, get this second grant?

25 A. Yes.

FB4YSIL4

Taub - Direct

1 Q. I want to direct your attention to what's been marked for
2 identification as Government Exhibit 368-2.

3 Do you recognize this document?

4 A. Yes.

5 Q. What is this document?

6 A. It is a letter from the Department of Health informing us
7 that we are the recipient of a Health Care Reform Act grant.

8 MR. GOLDSTEIN: Your Honor, the government offers
9 368-2.

10 THE COURT: Any objection?

11 MR. MOLO: No objection.

12 THE COURT: All right. 368-2 is received.

13 (Government's Exhibit 368-2 received in evidence)

14 MR. GOLDSTEIN: If we can publish 368-2.

15 BY MR. GOLDSTEIN:

16 Q. Dr. Taub, which state government agency sent you this
17 letter?

18 A. The Department of Health.

19 Q. Is that the same agency that sent you the first letter
20 announcing that you got your first grant?

21 A. It is.

22 Q. Prior to receiving this letter with notice of the second
23 grant, had you had any contact with the Department of Health
24 about your request?

25 A. No.

FB4YSIL4

Taub - Direct

1 MR. GOLDSTEIN: If we could read the first line of the
2 letter and zero in.

3 THE WITNESS: "The purpose of this letter is to advise
4 that your organization is the recipient of a 2003-2004 Health
5 Care Reform Act grant in the amount of \$250,000 from the
6 New York State Assembly's allotment in the Health Care
7 Initiatives Pool."

8 Q. Dr. Taub, what was your knowledge, if any, of your 2003 to
9 2004 Health Care Reform Act?

10 A. None.

11 Q. What was your knowledge, if any, of the Health Care
12 Initiatives Pool as referenced here?

13 A. I didn't know anything about it.

14 Q. Now, when we looked at the first letter from the Department
15 of Health that we looked at earlier, I asked you about some of
16 the names on that letter.

17 MR. GOLDSTEIN: Mr. Coccaro, if we could look at the
18 signature block and the CCs on this one.

19 THE WITNESS: I think they're the same names.

20 BY MR. GOLDSTEIN:

21 Q. So between the first grant and this one, have you had any
22 contact with Robert Reed?

23 A. No.

24 Q. How about with Dennis Whalen?

25 A. No.

FB4YSIL4

Taub - Direct

1 Q. Or Mark Van Guysling?

2 A. No.

3 Q. Now, after your program received the second grant, did
4 there come a time when you asked Silver for his help in
5 securing a third grant from New York State?

6 A. Yes.

7 Q. If we could look at Government Exhibit 129.

8 Is that in your binder?

9 A. Yes.

10 Q. Take a look at that.

11 Do you recognize that document?

12 A. Yes.

13 Q. Is this a letter that you sent to Sheldon Silver?

14 A. Yes.

15 MR. GOLDSTEIN: Your Honor, the government offers 129.

16 MR. MOLO: No objection.

17 THE COURT: 129 is received.

18 (Government's Exhibit 129 received in evidence)

19 MR. GOLDSTEIN: If we could publish 129. If we can
20 zoom in on the top portion of this letter, please.

21 BY MR. GOLDSTEIN:

22 Q. Dr. Taub, what was the date of this letter?

23 A. October 11, 2007.

24 Q. And there's handwriting on the letter, "Shelly-FYI only."

25 Whose handwriting is that?

FB4YSIL4

Taub - Direct

1 A. Mine.

2 MR. GOLDSTEIN: Mr. Coccaro, can we scroll back so we
3 can see the larger part of the first page of the letter.

4 BY MR. GOLDSTEIN:

5 Q. This letter contains explanatory notes; is that right?

6 A. Yes.

7 Q. Why did you include explanatory notes in this letter?

8 A. I was told that much of the language of the letter, the
9 text of the letter without the notes, was very technical and
10 Mr. Silver would have liked to have explanations for the
11 technical terms in the letter so it would be more
12 comprehensible.

13 Q. Did Sheldon Silver also ask you to provide him with a
14 letter that did not have the explanatory notes?

15 A. Yes. I didn't remember exactly the format of the request,
16 but he wanted the original letter, which was the letter without
17 the explanatory notes. And, I think, when he said it was too
18 technical, I rewrote the letter and added explanatory notes.
19 That's what happened.

20 Q. So let's look at Government Exhibit 130.

21 What is this document, Dr. Taub?

22 A. That is the letter that I first wrote without explaining
23 the technical terms.

24 MR. GOLDSTEIN: Your Honor, the government offers 130.

25 MR. MOLO: No objection.

FB4YSIL4

Taub - Direct

1 THE COURT: 130 is received.

2 (Government's Exhibit 130 received in evidence)

3 MR. GOLDSTEIN: If we could zoom to the top of this
4 document.

5 BY MR. GOLDSTEIN:

6 Q. What's the date on this document, Dr. Taub?

7 A. October 11, 2007.

8 Q. Is that the same date as on the version of the letter with
9 the explanatory notes, Government Exhibit 129?

10 A. Yes.

11 Q. I want to direct your attention on Government Exhibit 130
12 to the second page, fourth paragraph, "Many aspects of this
13 program have been greatly aided by support from New York State,
14 for which we are deeply appreciative, and which has helped lead
15 to major refinements in diagnosis and exciting, novel
16 treatments for this disease.

17 "Our request is that the legislature continue its
18 annual support in the amount of \$250,000 for this budget year.
19 We also hope that the legislature continues to review our
20 progress and considers further support in future years."

21 At the time that you sent this letter, was it your
22 understanding that your program was still being considered for
23 funding for this year?

24 A. I didn't know, but I thought I would write to it. I
25 suspected that it would be, yes.

FB4YSIL4

Taub - Direct

1 Q. Did you receive any response to this letter?

2 A. No response to that letter.

3 Q. You can set that aside.

4 Now, did there come a time when you heard from Sheldon
5 Silver directly about your request for a third grant from
6 New York State?

7 A. Yes.

8 Q. Where did that conversation take place?

9 A. In my office.

10 Q. In your office at Columbia?

11 A. Yes.

12 Q. So he came there personally?

13 A. Yes.

14 Q. What happened when he saw you?

15 A. During that conversation, he said that the third grant
16 would not be funded or could not be funded.

17 Q. Were those his exact words?

18 A. I don't think so. I don't know exactly, but that was -- he
19 just said it just could not be funded.

20 THE COURT: Could not be funded? Is that what you're
21 saying?

22 THE WITNESS: I don't think he used that term. I
23 don't think he used those words.

24 BY MR. GOLDSTEIN:

25 Q. What's your best recollection of the words that he used?

FB4YSIL4

Taub - Direct

1 A. He said, "I can't do this anymore." That's my
2 recollection.

3 Q. When he came to your office and said that to you, was that
4 after you had sent the letters in October of 2007?

5 A. Yes.

6 Q. How did you react to what Sheldon Silver told you?

7 A. I was disappointed.

8 Q. When he told you that, what, if anything, did Silver tell
9 you about Mount Sinai?

10 A. I don't think Mount Sinai was discussed. I don't recall
11 Mount Sinai being discussed then.

12 Q. When he told you that he couldn't fund the grant anymore,
13 what, if anything, did Silver tell you about outreach or
14 education to those who were exposed to asbestos in the 9/11
15 attacks?

16 A. I don't remember that being discussed.

17 Q. Now, even after Sheldon Silver told you that you weren't
18 going to receive any more state funding, did you continue to
19 send patients to Sheldon Silver?

20 A. Yes.

21 Q. Why did you continue to send patients to Silver?

22 A. I condition to send patients to Mr. Silver because I wished
23 to maintain that relationship. I felt that he was incentivized
24 to support mesothelioma research, and I was to continue to do
25 so if he could.

FB4YSIL4

Taub - Direct

1 Q. You testified earlier that you sought Silver's assistance
2 in helping your daughter get an internship.

3 A. Yes.

4 Q. Was she in law school at the time?

5 A. Yes.

6 Q. Approximately when was this?

7 A. I think this was in her second year of law school. I think
8 2006 or 2005. I'm not sure. Probably 2006. She was looking
9 for a summer internship, an unpaid internship.

10 I think she had one prospect, and she wanted to know
11 if there were others. I told her to write to Mr. Silver and
12 see if he knew anyone who would be willing to mentor her over
13 the summer.

14 Q. Prior to this, had your daughter gotten married?

15 A. Yes.

16 Q. Was Silver invited to your daughter's wedding?

17 A. No, he was not.

18 Q. About how many people attended your daughter's wedding?

19 A. A little over 400.

20 Q. Was Silver invited to one of the events after your
21 daughter's wedding?

22 A. Yes, he was.

23 Q. What was he invited to?

24 A. In Hebrew, it's called a Sheva Brochos.

25 Q. What is a Sheva Brochos?

FB4YSIL4

Taub - Direct

1 A. Well, it's a celebration that you hold for seven
2 consecutive days after the wedding, and it is to continue to
3 bless the couple. There are other reasons, but that's the main
4 reason.

5 Q. Did you invite Silver to one of the seven days of
6 blessings?

7 A. Yes. We invited him to the first one.

8 Q. Did he come?

9 A. Yes, he did.

10 Q. Did he come alone or with anybody?

11 A. I think he came by himself.

12 Q. Returning to the request for help with your daughter to get
13 an internship, what, if anything, did Silver do when your
14 daughter reached out to him?

15 A. I think he arranged for her to have an internship with a
16 Judge Schoenefeld.

17 Q. Did you know who Judge Schoenefeld was?

18 A. I did not.

19 Q. Did your daughter get that internship?

20 A. Yes.

21 Q. Did there also come a time when an organization that your
22 wife was involved in reached out to Sheldon Silver for
23 assistance?

24 A. Yes.

25 Q. What is the Shalom Task Force?

FB4YSIL4

Taub - Direct

1 A. The Shalom Task Force is an organization put together by a
2 group of Jewish women because they discovered that there was a
3 great deal of domestic abuse going on in that community, and
4 they wished to found an organization to combat it.

5 Q. What is your wife's role with the Shalom Task Force?

6 A. She was one of the founding members and remains on the
7 board to this day.

8 Q. I want you to look in your binder at Government Exhibit 310
9 marked for identification.

10 Do you recognize that document, Dr. Taub?

11 A. Yes.

12 Q. Did you help your wife write a letter to Sheldon Silver
13 seeking funding for Shalom Task Force?

14 A. I don't believe my wife wrote this letter, but I helped the
15 director of the organization -- I edited his letter to
16 Mr. Silver.

17 Q. If you could then turn to -- before we turn to that
18 actually, Dr. Taub.

19 MR. GOLDSTEIN: Your Honor, the government offers 310.

20 THE COURT: Any objection?

21 MR. MOLO: No objection.

22 THE COURT: All right. 310 is received.

23 (Government's Exhibit 310 received in evidence)

24 MR. GOLDSTEIN: If you could publish 310, Mr. Coccaro.

25 If you could look at the meta data at the top of the

FB4YSIL4

Taub - Direct

1 document.

2 BY MR. GOLDSTEIN:

3 Q. What's the file name of this document, Dr. Taub?

4 A. The file name is assembly letter revised by Taub (2).doc.

5 Q. Was this a document that you found on your computer?

6 A. Yes.

7 Q. What was the date that the document was created?

8 A. January, 21, 2008.

9 Q. Will you look at the first page of the document.

10 MR. GOLDSTEIN: If we could zoom in on the top portion
11 of the document.

12 THE WITNESS: Right.

13 BY MR. GOLDSTEIN:

14 Q. Are these the edits that you talked about a minute ago?

15 A. I don't remember clearly, but I was the only one who had
16 access to my computer. So I assume those are the edits.

17 Q. Do you recall speaking with Sheldon Silver about this
18 request in particular?

19 A. I do not.

20 Q. Now, if you could turn in your binder to Government Exhibit
21 311.

22 Do you recognize that document?

23 A. Yes.

24 Q. What is that document?

25 A. The file name?

FB4YSIL4

Taub - Direct

1 Q. What is the substance of it?

2 A. The substance is I scanned a letter that we got from the
3 executive director of the Shalom Task Force.

4 MR. GOLDSTEIN: Your Honor, the government offers 311.

5 MR. MOLO: No objection.

6 THE COURT: 311 is received.

7 (Government's Exhibit 311 received in evidence)

8 MR. GOLDSTEIN: Mr. Coccaro, if we could turn actually
9 to the second page of the document.

10 BY MR. GOLDSTEIN:

11 Q. Who is this letter from, Dr. Taub?

12 A. It's from Rabbi Schonbuch.

13 Q. Who is Rabbi Schonbuch?

14 A. He is the executive director of the Shalom Task Force.

15 Q. "Dear Dr. Robert and Susan, on behalf of Shalom Task Force,
16 I want to take this opportunity to acknowledge with deepest
17 sincerity your help in obtaining funding from Assemblyman
18 Sheldon Silver.

19 "We received the news that we will be getting a total
20 of \$40,000 from the state, \$25,000 from Sheldon Silver, \$15,000
21 from other assemblymen."

22 The stamp that's on the document on the lower right
23 side -- why did you include that?

24 A. Because I often stamped documents that I would scan and
25 then shred. So this way I would know -- when I put them in a

FB4YSIL4

Taub - Direct

1 pile, I would know which documents were to be scanned. That's
2 my way of stamping them.

3 Q. This is addressed to Dr. Robert and Susan. Is Susan Taub
4 your wife?

5 A. Yes.

6 Q. You can set that aside.

7 We're going to move to a different topic, Dr. Taub.

8 After Sheldon Silver told you that he could no longer
9 get the state to fund your research, did there come a time when
10 you heard about potential funding from the Simmons law firm?

11 A. Yes.

12 Q. What was the Simmons law firm?

13 A. The Simmons law firm is a personal injury law firm based in
14 St. Louis, Missouri, at that time. And they did large numbers
15 of mesothelioma cases as well.

16 Q. Did they represent patients with mesothelioma?

17 A. Some of my patients.

18 Q. Now, how did you learn about funding from the Simmons law
19 firm?

20 A. I was approached at a meeting in Washington by Joy
21 Wheeler --

22 MR. MOLO: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: I was at a mesothelioma meeting by Joy
25 Wheeler, who was a patient liaison, among other things, who

FB4YSIL4

Taub - Direct

1 worked for the Simmons foundation, and she approached us and
2 indicated she wished to support our research through the
3 Simmons Foundation.

4 BY MR. GOLDSTEIN:

5 Q. At the point when you heard this from Joy Wheeler, had you
6 referred any of your patients to the Simmons law firm?

7 A. I don't think so.

8 Q. Did you then engage in discussions with the Simmons law
9 firm about funding your research?

10 A. I first discussed this with MARF, the Mesothelioma Applied
11 Research Foundation. Ultimately, with those discussions in
12 mind, I proceeded to arrange for that kind of funding with the
13 law firm, yes.

14 Q. Why did you first discuss it with MARF?

15 A. Because I felt that the Simmons law firm should support
16 MARF primarily. And, although they told me they were
17 supporting 16 other universities throughout the country and
18 wished to pursue this on their own initiative, I wanted MARF to
19 be clearly aware of that situation.

20 Q. In talking about MARF, at that point, who was the executive
21 director of MARF?

22 A. I'm not sure whether Mary was the executive director, but
23 she already occupied a high position in MARF.

24 Q. When you spoke with MARF, are you referring to speaking to
25 her?

FB4YSIL4

Taub - Direct

1 A. Yes.

2 Q. And if you could remind the jury what was your relationship
3 with Mary Hesdorfer.

4 A. We were close. As I mentioned before, she had been my
5 nurse for nine years. I'm a big supporter of hers as well.

6 Q. Did she ultimately give her blessing for you to receive
7 funding from Simmons?

8 A. She felt it should be done, yes.

9 Q. I want you to look in your binder at Government Exhibit
10 598.

11 A. 598?

12 Q. 598, Dr. Taub.

13 MR. MOLO: May I be heard? I do have an objection.

14 THE COURT: Okay. Sure.

15 (At the sidebar)

16 MR. MOLO: Your Honor, my objection is that the
17 Simmons law firm's involvement in this case -- I see it as
18 pretty much there was a Miles for Meso walk which was
19 referenced earlier that Mr. Silver tried to help Dr. Taub and
20 the Simmons folk organize in lower Manhattan that doesn't pan
21 out. The Simmons firm is a firm that's out there doing this
22 sort of work.

23 I don't see how Dr. Taub's business relationship with
24 the Simmons firm, including their funding of his organization,
25 is in any way relevant.

FB4YSIL4

Taub - Direct

1 It's highly prejudicial in that it suggests that this
2 relationship that he has with Simmons, Dr. Taub, is the kind of
3 relationship that he was either expecting from Mr. Silver or
4 Weitz & Luxenberg.

5 It's what he had with Simmons. That's fine. This was
6 after the state grants stopped from New York, the two state
7 grants.

8 It's highly prejudicial. There's a suggestion that
9 there's some kind of a pay for play. It doesn't add anything
10 to the case. It adds a great deal of confusion to the case.
11 There is limited involvement by Simmons, and that's what ought
12 to be gotten into.

13 MR. GOLDSTEIN: Your Honor, the government intends to
14 offer a series of evidence that is all directly relevant to
15 Silver. Once he received this \$3.15-million gift from Simmons,
16 Dr. Taub started referring his patients to Simmons.

17 Sheldon Silver then -- from testimony, Sheldon Silver
18 then came to Dr. Taub and said, why so few patients? Dr. Taub
19 told him that he was sending patients to Simmons because
20 Simmons was funding his research.

21 Then there was both an event with the American Cancer
22 Society that Simmons helped sponsor that Silver showed up, and
23 then there was this Miles for Meso run that also Silver was
24 involved in with Dr. Taub when the Simmons people reached out
25 for Silver's help.

FB4YSIL4

Taub - Direct

1 Those were some of the emails that were part of the
2 motions in limine. So all of those emails are directly
3 relevant to Simmons as and Dr. Taub's state of mind.

4 MR. COHEN: At the end of the day, the Weitz &
5 Luxenberg firm wasn't giving money. It was the Simmons firm.
6 As to what Mr. Silver had done with the grants years before --

7 THE COURT: It shows that Taub was referring his
8 patients to Weitz & Luxenberg via Silver in exchange for grants
9 and that when the grants stopped, the referrals stopped.

10 MR. MOLO: But they didn't.

11 MR. COHEN: That goes to Dr. Taub's state of mind.

12 THE COURT: Right. Dr. Taub's state of mind is
13 circumstantial evidence. You can never prove state of mind
14 directly. You have to prove it circumstantially.

15 So all of these conversations between Taub and Silver
16 that talk about why he didn't get referrals anymore, because
17 they're going to this other organization that's willing to pay,
18 is some evidence -- I'm not saying it's dispositive, but it is
19 some evidence of what was going on relative to Taub and Silver.
20 It certainly reflects what was going on in Taub's head.

21 (In open court)

22 THE COURT: I understand that someone needs a bathroom
23 break. Why don't we take a five-minute break. Don't get too
24 comfortable back there because I'm going to bring you out as
25 quickly as possible. Don't discuss the case.

FB4YSIL4

Taub - Direct

1 MR. MOLO: If the allegations were charging Dr. Taub
2 with bribery, then the evidence might be relevant. As to
3 Mr. Silver's state of mind, it's not probative I don't think at
4 all. To the extent they can make any argument that it is is
5 highly prejudicial.

6 (Continued on next page)
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Taub - direct

1 THE COURT: I don't understand your prejudice
2 argument. How is it prejudicial to Mr. Silver that a different
3 organization made very substantial grants to Columbia for the
4 mesothelioma research program that Dr. Taub was running? How
5 does that harm Mr. Silver?

6 MR. MOLO: Because they're going to argue that that
7 was a very explicit direct relationship where the Simmons grant
8 money is going to Dr. Taub and Dr. Taub is sending the patients
9 and that is not what happened with respect to the state money,
10 it is a very different set of is circumstances. There is no
11 middle agency that is looking at this like there is at the
12 state. There is no involvement as --

13 THE COURT: As far as I can tell, Mr. Molo, with all
14 due respect, now we may hear something further on cross, but
15 there was a shocking lack of oversight of the grant that the
16 state gave the man. They didn't contact him before they gave
17 him the money and as far as I can tell from his direct -- maybe
18 there will be something that will come out different on
19 cross -- he didn't seem to have to report back on what he was
20 doing with the money.

21 MR. MOLO: Actually, both of those things are not
22 borne out by the facts.

23 THE COURT: Okay.

24 MR. MOLO: And, so, there are very different sets of
25 circumstances and the second one just opposed to the first, the

FB45sil5

Taub - direct

1 same situation compared to what happened with the state looks
2 much more sinister. It may not have been because of what the
3 Simmons situation was, their ability to give money directly to
4 Dr. Taub for whatever basis they did and whatever Dr. Taub was
5 willing to do with them, that's fine. The fact that there was
6 this later involvement in this Miles for Meso, we don't dispute
7 that they can raise that issue, but getting into the details of
8 the Taub-Simmons relationship is irrelevant and highly
9 prejudicial.

10 THE COURT: What happened after he started receiving
11 grants from the Simmons Foundation? Did he cut off his
12 referrals to Silver?

13 MR. GOLDSTEIN: In a very significant way. Even in
14 the chart that Mr. Molo used in his opening statement it showed
15 one referral for all of 2010 and that's the time period where
16 Simmons starts funding his research. The testimony will be
17 that Sheldon Silver, again, came to Dr. Taub's office and said,
18 effectively, why so few referrals? And Dr. Taub told him,
19 among other things, that he was now receiving money from
20 Simmons and he was giving patients to Simmons in part because
21 of that funding. That goes to Sheldon Silver's state of mind
22 in that it helps -- part of what the defense has argued again
23 and again in its motions *in limine*, is need for Dr. Taub to
24 have communicated to Sheldon Silver his interest in receiving
25 funding as part of the relationship that they had.

FB45sil5

Taub - direct

1 THE COURT: But this sounds like it was after. I
2 mean, the fact that he is telling Mr. Silver in 2010 you are
3 not getting my business because Simmons is contributing to the
4 research and you are not, how does that tell me what was in
5 Mr. Silver's mind four years prior?

6 MR. GOLDSTEIN: Because what happens next is that
7 Sheldon Silver then starts to give other official benefits to
8 Dr. Taub. He scrambles to provide him with a resolution and a
9 proclamation at the last minute for an event by the American
10 Cancer Society, he provides his -- he uses his power, we will
11 argue, to provide Dr. Taub's son Jonathan with a job that was
12 heavily dependent on grants from Silver.

13 THE COURT: So, chronologically these other things
14 that have been mushed in in terms of when precisely they
15 occurred, you are saying occurred after Dr. Taub alters his
16 referral practice from Weitz & Luxenberg to Simmons?

17 MR. GOLDSTEIN: That's correct. And then the
18 referrals --

19 THE COURT: And when is the conversation that takes
20 place between Taub and Silver relative to when Mr. Silver says
21 *Why have you quit sending me patients?* and there is an express
22 conversation between Dr. Taub and Mr. Silver; when is that?

23 MR. GOLDSTEIN: In middle 2010.

24 THE COURT: When are these other things?

25 MR. GOLDSTEIN: The ACS event is in 2011. The help

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Taub - direct

1 that Sheldon Silver provides for the Miles for Meso is a few
2 months after that, and then it is in late 2011, early 2012 when
3 Dr. Taub seeks help with getting his son a job and your Honor
4 will be able to see that the referrals picked up at the time
5 periods that he was asking for those types of assistance.

6 THE COURT: Okay. I got it. Okay.

7 MR. MOLO: As I heard Dr. Taub's testimony today,
8 according to him he had three or four cases a year to refer but
9 actually -- I'm using the chart.

10 THE COURT: We have the stats so we know that those
11 numbers are higher.

12 MR. MOLO: Yes, that the government provided, I agree,
13 and on those stats, which is what I used in my opening
14 statement, 2005, the heart of this alleged scheme there are six
15 referrals; 2011 there is four; 2012 there are six. You know,
16 however many he has it is not as if he is so cutting back on
17 the Weitz & Luxenberg. Again, it is sort of an apples and
18 oranges in terms of the nature of the relationship in the sense
19 of what may be permitted but yet very close, from the jury's
20 point of view, in terms of here is a doctor getting funding and
21 in this case big dollar funding. This is much more money than
22 we are talking about, these \$250,000 grants from the state, and
23 I just think that the inherent prejudice in that is going to be
24 very difficult to overcome. I don't see how we can --

25 THE COURT: I don't see how it is prejudicial. Tell

FB45sil5

Taub - direct

1 me again how it harms your client.

2 MR. MOLO: Because the jury is going to be led to
3 believe that this is the way Taub does business, it is a
4 pay-for-play sort of situation and that that must have been the
5 way he was doing business with Mr. Silver because --

6 THE COURT: But this isn't a pay for -- there is
7 nothing in this -- I mean, I have looked at it fairly quickly,
8 there is nothing in this that expressly says you give me a
9 grant I'll send you patients.

10 MR. MOLO: That's what they're going to argue.
11 Mr. Goldstein said as much.

12 MR. GOLDSTEIN: Your Honor, it is actually very
13 similar to the relationship he had with Sheldon Silver. He has
14 testified already very clearly that he referred patients in an
15 effort to get research funding.

16 THE COURT: To curry favor --

17 MR. GOLDSTEIN: Correct.

18 THE COURT: -- is what I heard. He referred patients
19 as a way to curry favor and maintain a relationship with
20 Mr. Silver in hopes that Mr. Silver would then return the favor
21 as he was able to by sending state grant money his way or
22 whatever other favors he needed from the state.

23 MR. GOLDSTEIN: He, in fact, made those requests
24 specifically and received benefits in return.

25 THE COURT: So that's his testimony. And when he was

FB45sil5

Taub - direct

1 unable to curry sufficient favor with Weitz & Luxenberg and
2 Sheldon Silver, he turned his affections elsewhere.

3 MR. MOLO: To the tune of \$3.15 million over five
4 years with the Simmons firm and --

5 THE COURT: I don't see how the amount of money that
6 he got from Simmons harms your client. I just don't understand
7 how it -- I don't get the prejudice to Sheldon Silver that
8 another -- I see the prejudice to Weitz & Luxenberg but not to
9 Sheldon Silver.

10 MR. MOLO: They're going to argue that that's the
11 value of these referrals. That's what the government is going
12 to argue.

13 THE COURT: That's one of the things they have to
14 prove.

15 MR. MOLO: Yes, but they've got to prove it with
16 relevant evidence that is not unfairly prejudicial and that's
17 what this is. I mean, if they want to -- they've had their
18 shot to try to say that this, somehow, was a *quid pro quo*, that
19 there was a direct bribe scheme and now to get into evidence
20 about whatever Taub did with somebody else for whatever amount
21 of money but it happens to be in this case a great deal of
22 money, is wholly irrelevant. It is irrelevant to Mr. Silver's
23 standpoint. Forget about Dr. Taub's standpoint, it may be
24 relevant to his state of mind but he is not charged with a
25 crime here. It is not relevant.

FB45sil5

Taub - direct

1 MR. GOLDSTEIN: Your Honor, this conduct was part of
2 the government's complaint. The defense has had all of the
3 discovery on this issue for months. They chose not to make an
4 *in limine* motion on it I think because it is quite clear it is
5 both relevant and it is not unfairly prejudicial. I don't
6 think we need to speak more on it.

7 THE COURT: I still don't see the prejudice. Would
8 you like a limiting instruction? What would you like for me to
9 tell the jury?

10 MR. MOLO: I guess if I could hear from them a -- we
11 don't have to take up your time but here a proffer as to what
12 the evidence would be, then we could discuss an *in limine*
13 instruction.

14 THE COURT: I think you have just heard what the
15 evidence is.

16 MR. MOLO: I don't see how an *in limine* instruction
17 will cure this.

18 THE COURT: Okay, then I'm not going to give one.
19 Let's bring the jury in.

20 MR. COHEN: Your Honor, one moment, please?

21 THE DEPUTY CLERK: Shall I get the witness?

22 THE COURT: Where is the witness?

23 MR. MOLO: Would you offer an instruction that says --
24 I don't believe this cures this but says that this doesn't
25 reflect Mr. Silver's state of mind?

FB45sil5

Taub - direct

1 THE COURT: It doesn't tend to prove Mr. Silver's
2 state of mind. I don't know that Mr. Silver would have known
3 about this but I'm not sure what that means. This is
4 circumstantial evidence. It is circumstantial evidence of what
5 the whole relationship was all about, what was motivating
6 Dr. Taub, how Dr. Taub was dealing with people. So, it is a
7 piece of circumstantial evidence. I personally don't think it
8 is all that -- in and of itself the amount of money is some
9 evidence of what the value of receiving these mesothelioma
10 leads are but I think you have heard -- I think the jury has
11 heard, in no uncertain terms, that mesothelioma cases yield
12 huge amounts of money for the lawyers who are bringing lawsuits
13 for them. That seems clear to me, enough so that the
14 foundation set up by one of these law firms was in a position
15 to give \$3.1 million to Columbia University which is pretty
16 impressive, more impressive I think than the dollar amounts
17 that Mr. Weitz testified that Weitz & Luxenberg has given.

18 MR. MOLO: So, the point is, though, that they look a
19 lot alike to a juror. They're going to look a lot alike but
20 yet they are fundamentally different and it is that fundamental
21 difference, this being state money, this being Mr. Silver and
22 all of it surrounding Dr. Taub's state of mind not Mr. Silver's
23 state of mind, that's the problem. There is an inherent
24 prejudice here to Mr. Silver by -- why is Dr. Taub's state of
25 mind with respect to Simmons, how is that relevant?

FB45sil5

Taub - direct

1 THE COURT: His dealings with -- we are going around
2 and around. I am going to bring the jury back out.

3 His dealings with Simmons are relevant because it
4 corroborates that the reason he was dealing with Silver was in
5 order to -- corroborates his testimony that he referred cases
6 to Silver to maintain a good relationship with Silver so that
7 Silver would repay that -- would, as the opportunity arose,
8 send state funds to Taub.

9 MR. COHEN: So, your Honor, I don't think it cures the
10 problem, as my colleague says. Can't you just say that this
11 evidence that they're going to hear about, the Simmons Taub
12 relationship, does not bear on Mr. Silver's state of mind? And
13 it doesn't.

14 THE COURT: Again, it is some circumstantial evidence
15 of the relationship between Taub and Silver.

16 MR. COHEN: But bearing on his state of mind, not
17 Mr. Silver's.

18 THE COURT: Yes. What's the government's -- you can't
19 use this to prove his state of mind. It does prove Taub's
20 state of mind.

21 MR. GOLDSTEIN: I think, your Honor, as the testimony
22 will come in, that sort of an instruction would be too broad
23 because there are parts of what happens with Simmons where it
24 does go directly to Mr. Silver's state of mind because of the
25 way that he responded, both in terms of the conversation that

FB45sil5

Taub - direct

1 he had when he came to Dr. Taub and said why so few referrals
2 and what he did afterwards.

3 THE COURT: I was going to say this letter.

4 MR. GOLDSTEIN: This letter.

5 THE COURT: This letter.

6 MR. GOLDSTEIN: This letter -- this letter, the
7 government agrees, does not go to Sheldon Silver's state of
8 mind.

9 THE COURT: Okay.

10 MS. COHEN: Your Honor, if can I briefly be heard?

11 You are giving a limiting instruction about a certain
12 document versus all the other documents and how they should
13 consider it. I think that is wildly confusing to the jury
14 because, of course, circumstantial evidence is how we prove
15 criminal intent of this defendant. And so, I don't think the
16 limiting instruction about a particular document because, of
17 course, we are going to argue that all the evidence they heard
18 is circumstantial or direct proof depending on the evidence, of
19 the defendant's criminal intent, and I don't want the jury to
20 think that certain pieces of evidence are not evidence of his
21 criminal intent.

22 THE COURT: You are hard pressed to say that this
23 document -- this document -- is circumstantial evidence of
24 Mr. Silver's intent. You have a long string to get there. It
25 is circumstantial evidence of what Dr. Taub was going on and I

FB45sil5

Taub - direct

1 am never going to instruct them that they can't consider what
2 was going on in Dr. Taub's head as part of the circumstantial
3 evidence that they will consider against Mr. Silver because it
4 clearly is circumstantial evidence.

5 MS. COHEN: Correct; but I don't think you are going
6 to go through each piece of document or witness testimony and
7 explain to them what is evidence of the defendant's intent
8 versus another witness and I think it is extremely confusing to
9 instruct them on one document versus the others.

10 THE COURT: Okay. I disagree.

11 Bring the jury in. Where is the witness?

12 (Continued on next page)

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Taub - direct

1 (Jury present)

2 THE COURT: Okay, Mr. Goldstein.

3 MR. GOLDSTEIN: Thank you, your Honor. Your Honor the
4 government offers Government Exhibit 598.

5 MR. MOLO: Objection.

6 THE COURT: Objection overruled.

7 Ladies and gentlemen, this document can be considered
8 by you in trying to determine what Dr. Taub's state of mind at
9 this period of time was. You can't consider it for determining
10 what Mr. Silver's state of mind was.

11 (Government's Exhibit 598 received in evidence)

12 BY MR. GOLDSTEIN:

13 Q. Thank you, your Honor.

14 Dr. Taub, if we can look at the top portion of this
15 document? Dr. Taub, is this the agreement that Columbia had
16 with the Simmons Foundation regarding funding for your research
17 program?

18 A. Yes, it is.

19 Q. And what was the Simmons Mesothelioma Foundation?

20 A. The Simmons Mesothelioma Foundation was set up by the
21 Simmons firm and they donated much of their profits -- or some
22 of their profits -- to the Foundation which they set up which
23 would, in turn, support research and to support patient
24 activity.

25 Q. And that foundation they set up was the Simmons

FB45sil5

Taub - direct

1 Mesothelioma Foundation?

2 A. Yes.

3 Q. Looking at the first paragraph of this letter, this is
4 addressed to Lee Goldman, MD. Did you know who he was?

5 A. He is the dean of the medical school.

6 Q. It says: Dear Dr. Goldman: The Simmons Mesothelioma
7 Foundation is pleased to formalize its promise to give
8 \$3,150,000 to Columbia University for the benefit of its
9 College of Physicians and Surgeons, Mesothelioma Center, in the
10 Department of Medicine.

11 Is that center, is that your program?

12 A. Yes.

13 Q. It says: This gift is made in honor of Robert Taub, MD.

14 So, was this a gift or a grant?

15 A. It was a gift.

16 Q. What was your understanding of what the Simmons Foundation
17 expected you to do with the money that they were providing?

18 A. Cure mesothelioma.

19 Q. I want to direct your attention to the third paragraph of
20 the agreement, "The Foundation will pay."

21 The Foundation will pay \$3,150,000 to the University
22 per the following schedule... and there is a schedule of
23 payments for each year. Dr. Taub, who came up with the total
24 amount and the payment schedule between your program and the
25 Simmons Foundation?

FB45sil5

Taub - direct

1 A. I did. It was a detailed budget projection for those five
2 years.

3 Q. Why does the funding go down year after year?

4 A. It goes down for two reasons. The first is that these
5 kinds of grants or gifts were given for the purpose of
6 establishing laboratory programs so the first couple of years
7 you have to buy a lot of equipment and you have to renovate a
8 lot of inventory which is one of the things we did in the
9 beginning and as time goes on and you solve some of the
10 problems, you can't predict what kind of research you are going
11 to have in five years so that covers sort of a five-year
12 period. I don't think many researchers can figure out what
13 they're going to be doing five years hence and we probably, if
14 we thought there were exciting things to do five years from now
15 we would put in another request -- which we did, actually.

16 Q. And Mr. Coccaro, if we could look at the second paragraph
17 of this letter?

18 It says: It is our understanding that Dr. Robert Taub
19 shall provide quarterly updates to the Foundation detailing the
20 prior quarter's activities supported by the pledge and the
21 projected budget for the upcoming year, or upon any other times
22 as reasonably requested by the Foundation.

23 Did you, in fact, provide quarterly or regular updates
24 to the Foundation?

25 A. Yes.

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Taub - direct

1 Q. And when you did that, who from the Foundation did you
2 report to?

3 A. Usually a Mr. Greg Kirkland, a Chris Guinn who was one of
4 the lawyers, but Greg Kirkland was the CEO of the Simmons firm
5 and also one of the heads of the Foundation and others were
6 members of the Foundation. And Joy Wheeler came, who was the
7 patient advocate, she came also, I think, for the first three
8 years. Two or three years, yeah.

9 Q. You mentioned a Greg Kirkland.

10 A. Yes.

11 Q. Was he somebody who you knew to be affiliated with the
12 Simmons firm?

13 A. Yes.

14 Q. And you mentioned Joy Wheeler, is that the person you
15 testified earlier was the person who first reached out to you
16 about funding from Simmons?

17 A. Yes.

18 Q. And those updates, reports that you provided, how long
19 would those meetings or those presentations take place?

20 A. Well, they usually took place at the very least at a
21 dinner. They would host a dinner for us at which I would come
22 and also a number of my staff would come because they wanted to
23 see the young people that were working with me.

24 Q. And did you do a slide show? How did you present to the
25 Simmons people?

FB45sil5

Taub - direct

1 A. Initially, when they came, we did a luncheon meeting and I
2 presented for a couple of hours a slide show, and in I think
3 year four -- 2014 -- I went down to the Simmons firm and
4 lectured to them for over two hours with slides.

5 Q. Returning to the State grants that you received what, if
6 any reports, did you give to anybody at the State regarding how
7 you were using the State money?

8 A. We gave a single report at the end of the grant period, a
9 brief report as part of the contractual obligation.

10 Q. Did you speak with Sheldon Silver about the substance of
11 that report?

12 A. No.

13 Q. Did you speak with anybody at the Department of Health
14 about the substance of that report?

15 A. I did not.

16 Q. And does that apply for both the first grant and the second
17 grant?

18 A. Yes.

19 THE COURT: Did you have to give a budget at the
20 beginning of the state grants?

21 THE WITNESS: The budget was put together by the
22 fiscal people who assisted in the administration of the
23 Foundation, they belonged to the department of foundation and
24 the budget.

25 THE COURT: For the state. I just want to make sure.

FB45sil5

Taub - direct

1 THE WITNESS: That was the internal accounting of the
2 budget and they're the ones who interfaced with the state.

3 THE COURT: Okay.

4 THE WITNESS: It was all done through university
5 administration.

6 BY MR. GOLDSTEIN:

7 Q. With regard to the reports that you provided to Simmons --

8 A. Yes.

9 Q. -- was the purpose of those reports to show what you were
10 using Simmons' money to do?

11 A. Yes.

12 Q. Now, once the Simmons firm -- let me withdraw that.

13 Once the Simmons Foundation had agreed to provide your
14 program with this \$3.15 million in funding, where did you start
15 to send your patients?

16 MR. MOLO: Objection.

17 THE COURT: Overruled.

18 A. In addition to -- in addition to Mr. Silver, I started
19 sending patients to Simmons.

20 Q. Why did you start to send patients to Simmons?

21 A. Because Simmons was a law firm who was supporting research.

22 Q. Was it because, in part, they were supporting your
23 research?

24 A. Yes.

25 Q. When you sent a patient to Simmons, who at Simmons did you

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Taub - direct

1 contact when you initially started sending patients to Simmons?

2 A. Joy Wheeler.

3 Q. And what information did you provide to Joy Wheeler about
4 the patients that you were sending to them?

5 A. Essentially the same information that this is a patient but
6 she was a nurse, so essentially the same information, perhaps a
7 little detail or two about asbestos exposure and contact
8 information that the patient had given me with instructions to
9 arrange a referral.

10 Q. When you say essentially the same information, were you
11 providing Joy Wheeler with the same information as you had been
12 providing to Sheldon Silver?

13 A. Correct.

14 Q. And with regard to Joy Wheeler, did you provide that
15 information by phone or by e-mail?

16 A. Mostly by phone, sometimes by e-mail.

17 Q. If you could look in your binder at what's been marked for
18 identification Government Exhibit 525-6; do you recognize that
19 document?

20 A. Yes.

21 Q. What is this document?

22 MR. MOLO: Objection.

23 A. It's an e-mail.

24 THE COURT: Hang on a second.

25 A. An e-mail to Joy Wheeler.

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Taub - direct

1 THE COURT: Hang on a second.

2 MR. MOLO: Objection.

3 MR. GOLDSTEIN: Hang on, Dr. Taub.

4 THE COURT: I'm sorry. What exhibit are you on?

5 MR. GOLDSTEIN: Government Exhibit 525-6. And if we
6 could be heard at side bar, your Honor?

7 THE COURT: Okay.

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Taub - direct

1 (At side bar)

2 MR. GOLDSTEIN: We want to introduce this e-mail and
3 there is a couple of these not for hearsay purpose but because
4 this is the thing that the government will argue is the
5 property that is being transferred from Dr. Taub to the Simmons
6 firm in this case and it is the same information that he
7 already testified he provided to Silver; it is the name, the
8 contact information, and a brief mention of mesothelioma and
9 nothing else.

10 MR. MOLO: My objection, it is not relevant, it is
11 hearsay, and it doesn't have -- it doesn't have any business in
12 the case. I mean, this is the exact same prejudice we were
13 talking about before, how we are going to get into the details
14 of patient referrals.

15 THE COURT: This is going to be quick. We have taken
16 up more time talking about it than to actually do it. It is
17 not coming in for the truth, it is not coming in to say that
18 Deanna Lane, native of Tulsa, has peritoneal mesothelioma. It
19 is coming in to show this is the sort of information that was
20 conveyed. So, it is coming in for a non-hearsay purpose.

21 MR. MOLO: It highlights the point that I was making
22 before, now they're taking a different aspects of the
23 relationship and trying to say it is the same thing.

24 THE COURT: He just testified it is the same thing. I
25 mean, you can cross him on it but he testified it is the same

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Taub - direct

1 thing. This just shows them what he was conveying.

2 MR. MOLO: Objection.

3 THE COURT: Overruled.

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Taub - direct

1 (In open court)

2 MR. GOLDSTEIN: Your Honor, the government offers --

3 THE COURT: Hang on a second. Can you have him
4 identify it again? I think there was an objection in the
5 middle of that.

6 BY MR. GOLDSTEIN:

7 Q. Dr. Taub, what is this document?

8 A. This is an e-mail that I wrote to Joy Wheeler.

9 Q. And what is the date on the e-mail?

10 A. Wednesday March 24th, 2010.

11 MR. GOLDSTEIN: Your Honor, the government offers
12 525-6.

13 THE COURT: And it is an e-mail for what purpose?

14 THE WITNESS: The purpose was to give Joy Wheeler a
15 referral of a patient to the Simmons firm.

16 MR. MOLO: Objection.

17 THE COURT: Overruled, so 526-06 is received.

18 MR. GOLDSTEIN: Your Honor, it is 525-06.

19 THE COURT: I'm sorry, 525-06.

20 (Government's Exhibit 525-06 received in evidence)

21 BY MR. GOLDSTEIN:

22 Q. If we can publish that, Mr. Coccaro?

23 Can you read the e-mail that you sent to Joy Wheeler?

24 A. We saw a new peritoneal mesothelioma patient who might
25 benefit from legal input. She is expecting a call. Her name

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Taub - direct

1 is Deanna Lane, native of Tulsa, telephone cell number is
2 918-dash-dash something-or-other.

3 Q. Dr. Taub, is this the information or the kind of
4 information that you provided to Sheldon Silver when you made
5 referrals to him by phone?

6 A. Yes.

7 Q. And when you say here she is expecting a call, does that
8 refer to the consent that you received from the patient that
9 you testified about earlier?

10 A. Yes.

11 MR. MOLO: Objection.

12 THE COURT: Overruled.

13 Q. Dr. Taub, if you could turn to Government Exhibit 525-7; do
14 you recognize this document, Dr. Taub?

15 A. Yes.

16 Q. Is this an e-mail that you sent to Joy Wheeler as well?

17 A. Yes.

18 Q. And what was the purpose of sending this e-mail?

19 A. The purpose, again, was to refer a patient to the Simmons
20 law firm and this would pass along the information.

21 MR. GOLDSTEIN: Your Honor, the government offers
22 525-7.

23 MR. MOLO: Objection.

24 THE COURT: Overruled. Is this the last one of these?

25 MR. GOLDSTEIN: Yes, it is, your Honor.

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Taub - direct

1 THE COURT: Overruled. So 525-7 is received.

2 (Government's Exhibit 525-7 received in evidence)

3 BY MR. GOLDSTEIN:

4 Q. If we could publish 525-7? If we can highlight the top
5 part of the e-mail?

6 What is the date of this e-mail, Dr. Taub?

7 A. Thursday, August 26, 2010.

8 Q. And it says: Dear Joy: I tried to call you this a.m. with
9 this information.

10 Did you generally try to call Ms. Wheeler first before
11 you would send an e-mail?

12 A. Yes.

13 Q. Our patient, Mr. George -- and it is redacted -- a 79 YO --
14 is that-year-old?

15 A. Yes.

16 Q. Former engineering/construction manager is considering
17 legal counsel regarding his mesothelioma diagnosis. He has
18 both pleural and abdominal disease, has undergone treatment,
19 and is advancing. I have given him your name.

20 Again, is this the same kind of information you
21 provided to Sheldon Silver when you referred cases to Sheldon
22 Silver?

23 A. Yes.

24 Q. You can set that aside, Dr. Taub.

25 Now, in 2010 you testified that you started sending

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Taub - direct

1 cases of yours to the Simmons firm; is that right?

2 A. Yes.

3 Q. Now, after you started sending patients of yours to the
4 Simmons firm, did you start referring fewer cases to Sheldon
5 Silver?

6 A. Yes.

7 Q. Did there come a time when Sheldon Silver came and spoke to
8 you about what was happening with the referrals to him?

9 A. Yes.

10 Q. Where did that conversation take place?

11 A. I believe in my office.

12 Q. Had you invited Silver to your office?

13 A. He was passing by and I agreed to see him.

14 THE COURT: So he asked for the meeting?

15 THE WITNESS: I'm sorry?

16 THE COURT: So did he ask for the meeting?

17 THE WITNESS: He was at the medical center for other
18 medical purposes and while he was there he passed by my office
19 and asked my secretary if he could talk to me, yes.

20 THE COURT: Okay.

21 BY MR. GOLDSTEIN:

22 Q. When you said that he was at the medical center for other
23 purposes, did you know that personally or is that what he told
24 you?

25 A. That's what he told me.

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Taub - direct

1 Q. So had you invited him to come?

2 A. No.

3 Q. When he came to your office what did he say to you?

4 A. I don't recall the total conversation but he said that he
5 is not getting as many referrals as he did before, he is
6 getting fewer referrals.

7 Q. Did he ask you why he wasn't getting so many referrals?

8 A. I don't remember if he did.

9 Q. What did you say in response to what he said to you?

10 A. I said two things. I said I was seeing more pleural cases
11 than peritoneal cases recently, and almost all of the pleural
12 cases that I saw had already been referred to Weitz & Luxenberg
13 probably by the surgeons who took care of them so that the
14 patients who did not have legal representation usually belonged
15 to the peritoneal category which were not seen by surgeons
16 before they were seen by me. I also informed him that I was
17 sending cases to the Simmons firm and that they had given me a
18 pledge of \$3,150,000.

19 Q. And did you tell him that you were sending patients to
20 Simmons in part because of the pledge that they had made to
21 your research?

22 A. I don't know if I said because of that but I think that was
23 certainly the inference that he should draw.

24 Q. What did you take away from that conversation with Sheldon
25 Silver?

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Taub - direct

1 A. Just what I said.

2 THE COURT: Did he walk away thinking you were going
3 to send him more cases or less cases? What do you think?

4 THE WITNESS: I have no --

5 THE COURT: You don't know.

6 THE WITNESS: Okay.

7 THE COURT: Was it a friendly conversation?

8 THE WITNESS: Yes. Very.

9 BY MR. GOLDSTEIN:

10 Q. Did you understand that he wanted more cases?

11 A. Yes.

12 Q. And following that conversation, did you in fact send any
13 additional cases of yours to Sheldon Silver?

14 A. I had been sending cases to him and I continued to send
15 cases to him, just not as many.

16 Q. At that point, since he had already told you that the state
17 wasn't going to fund your research program, why did you
18 continue to send any cases to Sheldon Silver?

19 A. Because Mr. Silver was an important state legislator,
20 because I had a relationship with him which I hoped would
21 incentivize himself so that when an opportunity arose to help
22 us fund mesothelioma research, he would.

23 Q. Dr. Taub, did there come a time when you learned that you
24 were going to receive an honor from the American Cancer
25 Society?

FB45sil5

Taub - direct

1 A. Yes.

2 Q. What was that honor?

3 A. I was going to get an award called the Collaborator Award.

4 Q. What did you understand the award was going to be for?

5 A. The award is basically for fundraising for the American
6 Cancer Society and you were set up to be an honoree which means
7 that you were going to help them raise funds.

8 Q. And was there a connection between this American Cancer
9 Society event and something called the Hope Lodge?

10 A. Yes.

11 Q. What was the Hope Lodge?

12 A. The Hope Lodge was a facility which was sponsored and built
13 by the American Cancer Society for accommodating patients who
14 are out-of-state who are being treated in New York, the New
15 York branch, and this provided facility for them so that they
16 could stay at a lower cost than it would cost to stay in a New
17 York Hotel. It was a very good idea.

18 Q. Was the purpose of this event to raise money for the Hope
19 Lodge?

20 A. Yes.

21 Q. Do you know how it came to be that you were selected for
22 this award?

23 A. Well, I had, as I mentioned before, many of my patients are
24 from out-of-state and they were using the facility so they felt
25 that this helped publicize the facility as well.

FB45sil5

Taub - direct

1 Q. Did you ask the Simmons law firm or the Simmons Foundation
2 to give a donation to the Hope Lodge?

3 A. Absolutely.

4 Q. What did you initially ask for?

5 A. I asked them for \$100,000 to be a sponsor of the event.

6 Q. And how did they respond to that?

7 A. They gave \$6,500 for a table.

8 Q. Were you happy with that?

9 A. Yes.

10 Q. And as the event approached, did there come a time where
11 you suggested to the American Cancer Society that they reach
12 out to Sheldon Silver?

13 A. Yes.

14 Q. Why did you ask the American Cancer Society to reach out to
15 Sheldon Silver?

16 A. Because I thought Mr. Silver would lend prestige to the
17 event and perhaps help in fundraising by his presence, and that
18 the Hope Lodge was in his Congressional district.

19 Q. Did you contact Silver directly or did the American Cancer
20 Society contact Silver directly?

21 A. I did not run the event so I suggested it to those who were
22 running the event that they might want to do that.

23 Q. And did Sheldon Silver end up coming to the event?

24 A. Yes.

25 Q. About how soon before the event did you learn that Silver

FB45sil5

Taub - direct

1 would come?

2 A. About a week. I'm not sure.

3 Q. And if you could look in your binder at what's been marked
4 for identification as Government Exhibit 525-13?

5 A. 525-13?

6 THE COURT: It is on the screen, Dr. Taub.

7 THE WITNESS: What?

8 THE COURT: It is on the screen.

9 THE WITNESS: Okay. Let's do that.

10 BY MR. GOLDSTEIN:

11 Q. I want you to turn your attention to the second page of
12 this. Do you recognize this document, Dr. Taub?

13 A. Yes.

14 Q. And was this the original timeline for the event at the
15 American Cancer Society?

16 A. Yes. I believe so.

17 MR. GOLDSTEIN: Your Honor, the government offers
18 525-13.

19 THE COURT: Any objection?

20 MR. MOLO: I do, because there is some other stuff on
21 the other side that I don't know what it is.

22 MR. GOLDSTEIN: We will redact and only publish the
23 second page, your Honor.

24 MR. MOLO: I have no problem with --

25 THE COURT: Okay, so the second page of 525-13 is

FB45sil5

Taub - direct

1 received.

2 MR. GOLDSTEIN: Thank you, your Honor.

3 (Government's Exhibit 525-13 received in evidence)

4 BY MR. GOLDSTEIN:

5 Q. If we can publish only the second page of 525-13?

6 A. That is 525-16?

7 Q. 13, Dr. Taub.

8 Mr. Coccaro, is there a way we can zoom in on the Run
9 of Show so that the jury can see it? I mean actually the full
10 sequence of events for the evening. Thank you, that's much
11 better.

12 Dr. Taub, in this version of the Run of Show for the
13 event was Sheldon Silver listed as giving any remarks or making
14 any presentation?

15 A. I don't see it there, no.

16 MR. GOLDSTEIN: Your Honor, at this point I want to
17 read into the record a stipulation concerning the American
18 Cancer Society, it is S-4.

19 THE COURT: Okay.

20 Again, this is just an agreement between the parties.

21 MR. GOLDSTEIN: Is there any objection to us
22 publishing it so I can read it to the jury?

23 MR. MOLO: This?

24 MR. GOLDSTEIN: The S-4 stipulation.

25 MR. MOLO: No. A stipulation, I guess not.

FB45sil5

Taub - direct

1 THE COURT: No, it is stipulated so you can put it on
2 the screen.

3 MR. MOLO: I'm sorry. I don't understand what is
4 being asked of us.

5 THE COURT: He asked if you have any objection to
6 having S-4 published.

7 MR. GOLDSTEIN: I thought the jury would prefer to
8 read along.

9 Mr. Coccaro, if we can start with the: If called to
10 testify?

11 If called to testify, a custodian of records from
12 American Cancer Society, (ACS), would testify, as follows:

13 Mr. Coccaro, can you enlarge that so that I can read
14 the numbers? Thank you.

15 Government's Exhibits 380 through 383, 375, 376, and
16 379 are full and complete records of the acts, transactions and
17 events described or shown therein; were made and/or received,
18 and thereafter maintained, in the regular course of business of
19 ACS; were made at or near the time of the acts, transactions
20 and events recorded therein; and contain information set forth
21 by or obtained from persons with knowledge of those matters.

22 It is further stipulated and agreed that this
23 stipulation may be received in evidence as a Government Exhibit
24 at trial.

25 Your Honor, the government offers S-4.

FB45sil5

Taub - direct

1 And, Mr. Coccaro, if you can go back to the numbers
2 again so I get them right?

3 The government also offers Government's Exhibits 380
4 through 383, 375, 376, and 379.

5 THE COURT: So 375, 376, 379, 380, 381, 382 and 383
6 are received as well as S-4.

7 MR. GOLDSTEIN: Thank you, your Honor.

8 (Government's Exhibits 375, 376, 379, 380, 381, 382,
9 383 and S-4 received in evidence)

10 BY MR. GOLDSTEIN:

11 Q. So, if we can turn to Government Exhibit 379, Mr. Coccaro,
12 and publish that?

13 Dr. Taub, are you able to find this in your binder?

14 A. I have 380.

15 THE COURT: 379.

16 THE WITNESS: But I don't seem to see 379.

17 Q. Dr. Taub, do you recognize this as an invitation list for
18 the American Cancer Society event?

19 A. I don't remember it.

20 Q. You don't recognize this document?

21 A. No.

22 Q. Will you just turn to the second page of the document and
23 if we can highlight that middle line where it says: Sheldon
24 Silver?

25 A. Yes.

FB45sil5

Taub - direct

1 Q. Was Sheldon Silver your guest at this event?

2 A. Yes.

3 Q. Did you pay for his ticket?

4 A. Yes.

5 Q. If we could then turn to Government Exhibit 375, which
6 should be the next document in your binder and we can publish
7 375.

8 Do you see at the bottom of this Run of Show that
9 there is now a reference to Sheldon Silver making remarks?

10 A. Yes.

11 Q. Do you recall Sheldon Silver making remarks at the event
12 when he did come?

13 A. Yes, I do.

14 Q. If you could turn in your binder to Government Exhibit 376;
15 what do you recognize this to be?

16 A. I'm not sure. The cover of a pamphlet from American Cancer
17 Society or cover of an invitation? I'm not sure what it is.

18 Q. Was this the program for the event?

19 A. It looks like it might be, yes.

20 Q. Let me direct your attention to the second page of the
21 document. If you can enlarge the awards honoring those, those
22 three names?

23 Do you recall being honored along with two other
24 individuals?

25 A. Yes.

FB45sil5

Taub - direct

1 Q. And were those two other individuals Alisan Goldfarb and
2 Susan Rotenstreich?

3 A. Yes.

4 Q. Rotenstreich. I apologize.

5 If we can turn to the sixth page of the document,
6 under the Awards in Medical Excellence: Special thanks to our
7 2011 benefactor supporters and contributors.

8 And who was listed as a platinum benefactor for the
9 event?

10 A. Yes.

11 Q. Who was listed as a platinum benefactor for the event?

12 A. Yes, they were; the Simmons firm was.

13 Q. The Simmons firm?

14 A. Yes; Simmons Mesothelioma Foundation.

15 Q. That's the Foundation, not the firm?

16 A. Correct.

17 Q. The Foundation is what purchased the table for the event
18 for the \$6,500?

19 A. I believe so.

20 Q. Then if you could turn, Mr. Coccaro, to the next page and
21 you see that there is -- you can scroll ahead a couple more
22 pages and I will tell you when to stop -- stop right here.

23 Do you see the ad on the right side of the program
24 here?

25 A. Yes.

FB45sil5

Taub - direct

1 Q. It is only by working together that we will take treatments
2 for mesothelioma patients to new heights. We are proud to
3 support Dr. Robert Taub, a true leader in the fight against
4 mesothelioma.

5 It says: The Simmons Mesothelioma Foundation.

6 This is the foundation that was now supporting your
7 research?

8 A. They were donating to it, yes.

9 Q. Now, before your testimony today did you have a chance to
10 look through this document?

11 A. I saw it at the time but I have not -- did not review it
12 until right now.

13 Q. Can you briefly look through the document? Do you see any
14 reference in this program to either Sheldon Silver or to
15 Weitz & Luxenberg?

16 A. In the advertisements or in the program?

17 Q. Anywhere in the program, and we can flip through.

18 MR. GOLDSTEIN: Judge, I don't know if you want to do
19 an afternoon break now?

20 A. I don't think he is listed on the program in that
21 particular listing.

22 Q. Mr. Coccaro, if you could go back to the program part of
23 this document, page, if we can go to the next page, right
24 there, program, Thursday, May 12, 2011. Do you see Sheldon
25 Silver listed in the program?

FB45sil5

Taub - direct

1 A. In that same document I do not see him listed.

2 Q. Did you make remarks at this event?

3 A. Did I what?

4 Q. Did you make remarks at this event?

5 A. Yes, I spoke.

6 Q. And you testified that Sheldon Silver also gave remarks.

7 Did Sheldon Silver also present you with anything?

8 A. Yes, he did.

9 Q. You can look in your binder as Government Exhibit 314. I
10 am going to give this to you.

11 Do you recognize Government Exhibit 314?

12 A. Yes.

13 Q. What is that?

14 A. It is a legislative resolution by the New York State
15 Assembly saying nice things about me.

16 MR. GOLDSTEIN: Your Honor, the government offers 314.

17 THE COURT: Any objection?

18 MR. MOLO: No objection, your Honor.

19 THE COURT: 314 is received.

20 (Government's Exhibit 314 received in evidence)

21 BY MR. GOLDSTEIN:

22 Q. If we can publish that, Mr. Coccaro?

23 Was this presented to you at this event?

24 A. Yes, it was.

25 Q. Can we enlarge the first page in the first paragraph? The

FB45sil5

Taub - direct

1 entire first half of that page, if we can, and scroll up a
2 little bit, please?

3 Do you see where it says: Assembly no. 486. State of
4 New York Legislative Resolution. By: M. of A. Silver. It
5 says: Honoring Dr. Robert Taub, Ph.D, on the occasion of his
6 designation as recipient of the Collaborator Award by the
7 American Cancer Society.

8 I will not read the entire thing but if we can a
9 little bit more? It says: Whereas, it is the sense of this
10 legislative body to recognize and pay tribute to those
11 individuals within the medical field who distinguish themselves
12 through professional excellence and who have made significant
13 contributions to the quality of life of citizen in the State of
14 New York.

15 If we can scroll down a little bit further to be able
16 to do the whereas a leader within?

17 Whereas, a leader within the medical community,
18 Dr. Robert Taub is receiving this meritorious award for his
19 significant contributions to the fight against cancer.

20 And then if we can look at the bottom of that page,
21 the last two paragraphs?

22 Whereas, as a leader in his profession, Dr. Robert
23 Taub has proven himself to be a great asset to medicine and to
24 the health and welfare of the citizens of the State of New
25 York.

FB45sil5

Taub - direct

1 Dr. Taub, after you received this resolution did you
2 receive any additional funding from the State of New York?

3 A. No.

4 Q. And does this resolution anywhere mention that Sheldon
5 Silver had provided or helped provide funding to your program?

6 A. It does not.

7 Q. If we could look at Government Exhibit 315?

8 THE COURT: 315?

9 MR. GOLDSTEIN: 315, your Honor, which is a thing --

10 THE COURT: Okay, not in my book.

11 MR. GOLDSTEIN: Correct.

12 MS. COHEN: There is a Xerox of it, I believe.

13 THE COURT: That's fine.

14 BY MR. GOLDSTEIN:

15 Q. Do you recognize that, Dr. Taub?

16 A. Yes.

17 Q. Is that something that was also presented to you by Sheldon
18 Silver at this event?

19 A. Yes.

20 Q. What does it say at the top?

21 A. The Assembly, State of New York, proclamation honoring
22 Dr. Robert Taub, Ph.D, upon the occasion of his designation as
23 recipient --

24 THE COURT: Dr. Taub, use the mic.

25 A. As recipient of the Collaborator Award.

FB45sil5

Taub - direct

1 Q. I will stop you there.

2 A. Good.

3 MR. GOLDSTEIN: Your Honor, the government offers 315.

4 THE COURT: Any objection?

5 MR. MOLO: No objection.

6 THE COURT: 315 is received.

7 (Government's Exhibit 315 received in evidence)

8 THE COURT: Does it come framed, Dr. Taub?

9 THE WITNESS: It came exactly as you see it.

10 THE COURT: Okay, as framed. All right.

11 BY MR. GOLDSTEIN:

12 Q. And what did you do with this after Sheldon Silver
13 presented this to you?

14 A. I hung it in my office.

15 Q. Dr. Taub, Government Exhibit 314, which was the resolution
16 that we looked at, was this presented to you also in this form?

17 A. I believe so.

18 THE COURT: This form, just for the record, seems to
19 be a blue folder that has it inside maybe?

20 MR. GOLDSTEIN: It does, your Honor; and for the
21 record, on the cover of the blue folder it says New York State
22 Assembly.

23 THE COURT: In gold.

24 MR. GOLDSTEIN: In gold; and inside there is a gold
25 embossed emblem with blue ribbon on the right side.

FB45sil5

Taub - direct

1 THE COURT: Are you getting to a good time to stop for
2 our afternoon break?

3 MR. GOLDSTEIN: Yes. We can stop right now.

4 THE COURT: Don't let me interrupt your train of
5 thought, but if this is a good time to stop we can stop now.

6 MR. GOLDSTEIN: I just have a few more questions about
7 this event.

8 THE COURT: Finish those and then we will take the
9 afternoon break.

10 (Continued on next page)

FB4YSIL6

Taub - Direct

1 BY MR. GOLDSTEIN:

2 Q. Dr. Taub, did you know in advance of the event whether you
3 would be receiving either a proclamation or a resolution?

4 A. I did not.

5 Q. What did it mean to you to receive this recognition?

6 A. It was very nice.

7 Q. Who was at --

8 THE COURT: Talk into the mic.

9 THE WITNESS: It was very nice.

10 BY MR. GOLDSTEIN:

11 Q. Who was at the event with you?

12 A. My family and my laboratory staff and members of the
13 department of medicine of Columbia.

14 Q. So was it important to you in front of those people to
15 receive these recognitions from Sheldon Silver?

16 A. It was nice.

17 MR. GOLDSTEIN: Mr. Coccaro, if we can look at
18 Government Exhibit 380, which has been admitted. 383,
19 Mr. Coccaro, first.

20 BY MR. GOLDSTEIN:

21 Q. Let's look at 383 to begin with since it's up on the
22 screen, and you can see it up on your screen, Dr. Taub.

23 A. Yes.

24 Q. Who was that speaking at the podium?

25 A. Mr. Silver.

FB4YSIL6

Taub - Direct

1 Q. Who is that to his right standing behind him with his arms
2 clasped?

3 A. That's me with a bow tie.

4 Q. Was this picture taken, as you can recall, at the event?

5 A. Yes.

6 Q. If we can look at Government Exhibit 382.

7 What is happening in this photograph, Dr. Taub?

8 A. It looks like we are holding up the proclamation for a
9 photograph.

10 Q. Who is to the right of you?

11 A. Mr. Silver.

12 Q. What do you see in Mr. Silver's left hand?

13 A. I think it's that blue folder, but I'm not sure.

14 Q. In his right hand -- is that the proclamation? Government
15 Exhibit 315?

16 A. Yes.

17 MR. GOLDSTEIN: Perfect time for a break, your Honor.

18 THE COURT: Okay. Let's take about a ten-minute
19 break. Be back in the courtroom at 3:45. Don't talk about the
20 case.

21 (Jury not present)

22 THE COURT: Ten-minute break.

23 (Recess)

24 (Jury present)

25 THE COURT: Dr. Taub, you're still under oath.

FB4YSIL6

Taub - Direct

1 Mr. Goldstein.

2 MR. GOLDSTEIN: Thank you, your Honor.

3 BY MR. GOLDSTEIN:

4 Q. Dr. Taub, we've been talking about this event with the
5 American Cancer Society.

6 Did you make remarks at this event?

7 A. Yes. I spoke.

8 Q. Would you look in your binder at Government Exhibit 313.

9 What is Government Exhibit 313, Dr. Taub?

10 A. That's the text of my remarks.

11 MR. GOLDSTEIN: Your Honor, the government offers 313.

12 THE COURT: Any objection?

13 MR. MOLO: No objection.

14 THE COURT: 313 is received.

15 (Government's Exhibit 313 received in evidence)

16 MR. GOLDSTEIN: Mr. Coccaro, if we could turn to the
17 second page of 313. Let's look at the second half middle of
18 these remarks.

19 BY MR. GOLDSTEIN:

20 Q. Dr. Taub, do you recall whether you gave these remarks --
21 did you have a copy of your remarks with you when you gave your
22 remarks?

23 A. Yes.

24 Q. So it says, "Our mesothelioma center could not have taken
25 root without the initial support of the Vivian and Seymour

FB4YSIL6

Taub - Direct

1 Milstein family and the Margie and Mark Gershwind family, both
2 of whom have been longstanding supporters of the Columbia
3 Presbyterian Medical Center.

4 "Some of our earlier research efforts were supported
5 by the New York State Department of Health, which clearly
6 recognized the hazards posed by asbestos for the citizens of
7 New York state and New York city."

8 And then you say, "I am pleased to acknowledge the
9 presence of the Honorable Sheldon Silver, Speaker of the
10 New York Assembly and an untiring advocate for the health of
11 New York City citizens."

12 Dr. Taub, why in this speech did you not reference
13 Sheldon Silver's assistance with providing the New York State
14 funding?

15 A. Because I thought that this was -- Sheldon Silver's role
16 was to pass along the request to the New York State Department
17 of Health and that the funding was coming from New York State.

18 Q. Now, after you spoke at this event, did Sheldon Silver
19 speak?

20 A. Yes.

21 Q. And do you recall, in his remarks, if he said anything
22 about state funding for your research?

23 A. I don't recall.

24 Q. Now, after the event at the American Cancer Society, was
25 there a dinner held afterwards?

FB4YSIL6

Taub - Direct

1 A. There was a dinner at the American Cancer Society, a brief
2 dinner. But then there was another dinner of the Simmons firm.

3 Q. Who paid for the second dinner with the Simmons firm?

4 A. The Simmons firm.

5 Q. Did you attend that second dinner?

6 A. Yes.

7 Q. Where did that take place?

8 A. I believe it took place at the Solo restaurant in New York
9 which no longer exists at that location.

10 THE COURT: Was this all in the same night? There
11 were two dinners?

12 THE WITNESS: Well, the dinner at the American Cancer
13 Society was really just hors d'oeuvres.

14 BY MR. GOLDSTEIN:

15 Q. So there was a dinner at the Solo restaurant that the
16 Simmons firm paid for after the American Cancer Society event;
17 is that right?

18 A. Yes. That was one of their quarterly dinners that they
19 would sponsor in order to discuss my research with me and my
20 staff.

21 Q. Did Sheldon Silver come to that dinner?

22 A. Yes.

23 Q. Was Joy Wheeler from the Simmons firm at that dinner?

24 A. Yes.

25 Q. Did you introduce Sheldon Silver to Joy Wheeler?

FB4YSIL6

Taub - Direct

1 A. Yes.

2 Q. If you could look in your binder at Government Exhibit 327.
3 It should be going forward in your binder after the pictures.

4 A. Right after the pictures? I think my binder was
5 rearranged. Okay. Yes. Okay.

6 Q. Do you recognize this document, Dr. Taub?

7 A. Yes.

8 Q. What is this document?

9 A. It's a letter that I wrote him thanking him for his kind
10 words at the ACS awards and for providing me with a handsome
11 plaque for my office.

12 Q. When did you write this letter?

13 A. May 13.

14 MR. GOLDSTEIN: The government offers 327.

15 MR. MOLO: No objection.

16 THE COURT: 327 is received.

17 (Government's Exhibit 327 received in evidence)

18 MR. GOLDSTEIN: Can we publish this. Again zoom in on
19 the text of the letter.

20 BY MR. GOLDSTEIN:

21 Q. "Dear Shelly, Susan and I wish to thank you for your very
22 kind words at the ACS awards and for providing me with a
23 handsome plaque for my office. I greatly value your
24 friendship," and then from you.

25 Why did you write, "I greatly value your friendship"?

FB4YSIL6

Taub - Direct

1 A. Because he was acting as a friend, and I valued that.

2 Q. How close of a friend at this point did you consider
3 Sheldon Silver to be?

4 A. We had a friendly relationship.

5 Q. Now, after this awards, the ACS awards, did there come a
6 time when you worked with people at the Simmons firm on a
7 fundraising event for mesothelioma?

8 A. Yes.

9 Q. What was that event?

10 A. The Simmons firm had sponsored sportsmanlike runs, usually
11 5-K, but it could also be 10-K runs. The runners would
12 support -- the runners and their supporters would donate to
13 mesothelioma research through the Simmons Foundation.

14 They had sponsored these all over the country, and
15 they wished to do one in New York. They had not done one in
16 New York.

17 Q. How did you get involved in the New York run?

18 A. Joy asked me to get involved in it and to offer my ideas
19 about it, and my idea was to organize a run around the World
20 Trade Center site, which I thought would be very attractive to
21 perspective runners because they didn't have a run there before
22 and that we should try to organize it to do that because,
23 again, the World Trade Center was the source of a lot of
24 asbestos pollution in the air.

25 Q. In order to make this run happen, did you turn to Sheldon

FB4YSIL6

Taub - Direct

1 Silver for assistance?

2 A. Yes.

3 Q. Why did you turn to him?

4 A. Because it turned out that we would need certain permits
5 from the city to organize that kind of a run on a Sunday
6 morning, and we had to know the state agencies to approach and
7 various other items. And I thought there Sheldon Silver, since
8 that's in his congressional district, could help facilitate
9 that.

10 Q. Did you end up working on trying to get these permits and
11 other approvals with Joy Wheeler from the Simmons firm?

12 A. Yes.

13 Q. Dr. Taub, if you can turn in your binder to Government
14 Exhibit 525-16. We can pull that up on your screen if you're
15 getting lost in your binder.

16 A. I have 525-17.

17 Q. Before that.

18 A. I've got it. Yes. I have it.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. Is it an email?

22 A. Yes, it is.

23 Q. Between who and whom?

24 A. It was to Joy Wheeler.

25 Q. And from yourself?

FB4YSIL6

Taub - Direct

1 A. Yes.

2 Q. Does this concern the Miles for Meso run that you were just
3 testifying about?

4 A. Yes.

5 MR. GOLDSTEIN: Your Honor, the government offers
6 525-16.

7 MR. MOLO: No objection.

8 THE COURT: Okay. 525-16 is received.

9 (Government's Exhibit 525-16 received in evidence)

10 MR. GOLDSTEIN: If we can put this up on the screen
11 and publish. Let's look at the bottom email first from Joy
12 Wheeler to others.

13 BY MR. GOLDSTEIN:

14 Q. This is an email from August 23, 2011. It's from Joy
15 Wheeler. The first two is Leslie Kemerling.

16 Who is that?

17 A. Leslie Kemerling is my secretary, and her husband is in the
18 business of helping organizing those rungs. He runs a
19 sportswear store.

20 Q. Did her husband help with this Miles for Meso run that you
21 were trying to plan?

22 A. I believe he did.

23 Q. You are cc'd on this email, and it says, "Hello, all
24 this a.m. I talked with Assemblyman Silver regarding our
25 difficulty in getting authorization for the walk on

FB4YSIL6

Taub - Direct

1 September 23, 2012."

2 Now, you had introduced Joy Wheeler to Sheldon Silver
3 previously?

4 A. Yes.

5 Q. It says that, "He is happy to assist. Yae. Please send
6 him all the documents to: Assemblyman Sheldon Silver, 250
7 Broadway, 23rd floor, New York, New York, 2007. Mark the
8 envelope personal and confidential.

9 "I am greatly appreciative of his willingness to
10 assist. Please send the documents ASAP. Thx, Joy."

11 Now can we look at how you responded to this email.

12 A. I responded to Joy.

13 Q. You responded to Joy?

14 A. Yes.

15 Q. Can you read to the jury your response to Joy.

16 A. Sure. "You are a real pro. Be glad to help with this when
17 I get back." I must have been away at the time. I don't
18 recall.

19 "It will probably cost us. He is very good at getting
20 people to owe him, but if he says he will deliver, he does."

21 Q. Now, when you say, "It will probably cost us," what are you
22 referring to?

23 A. I'm not sure what I was referring to at the time, but one
24 possibility in my mind was that he was going to ask for
25 referrals.

FB4YSIL6

Taub - Direct

1 THE COURT: He was going to ask for what?

2 THE WITNESS: That Sheldon Silver was going to ask for
3 referrals.

4 BY MR. GOLDSTEIN:

5 Q. So the next line is, "He is very good at getting people to
6 owe him, but if he says he will deliver, he does."

7 What did you mean by that?

8 A. Just what it says. If you ask him for something, he is a
9 very good negotiator.

10 Q. What do you mean by "he is a very good negotiator"?

11 A. If I would ask him to do something, he would ask for
12 something in return.

13 Q. You testified a couple of minutes ago that at this time
14 period, you considered Sheldon Silver to be a friend.

15 A. Yes.

16 Q. How many of your friends, when you ask them for something,
17 ask for something in return?

18 MR. MOLO: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: If you have a very close family friend,
21 that's not what you expect. We had a very friendly
22 relationship, and under those circumstances, there are
23 negotiations involved in it.

24 BY MR. GOLDSTEIN:

25 Q. If you could turn in your binder to Government Exhibit 526.

FB4YSIL6

Taub - Direct

1 Now, before we look at that document, did the people
2 who you were working with on trying to arrange this run put
3 together a letter to send to Sheldon Silver seeking his
4 assistance?

5 A. Yes. They put together this letter.

6 Q. So, looking at Government Exhibit 526, is that the letter?

7 A. Yes.

8 MR. GOLDSTEIN: Your Honor, the government offers 526.

9 MR. MOLO: No objection.

10 THE COURT: 526 is received.

11 (Government's Exhibit 526 received in evidence)

12 MR. GOLDSTEIN: We'll look just at the top portion of
13 this letter.

14 BY MR. GOLDSTEIN:

15 Q. The front part of this is from the Westchester Roadrunner.

16 Do you know what that is?

17 A. I believe that is the entity that Mr. Kemerling runs.

18 Q. And Mr. Kemerling -- was that the husband of your
19 secretary?

20 A. Right.

21 Q. It's dated September 8, 2011, to Assemblyman Sheldon
22 Silver. "Dear Assemblyman Silver, the Simmons Mesothelioma
23 Foundation sponsored by the Simmons firm has been sponsoring
24 Miles for Meso run/walk races over the past three years in
25 small communities.

FB4YSIL6

Taub - Direct

1 "The goal is to raise funds for research, increase the
2 public awareness of the dangers of asbestos, and provide
3 education on current treatment for mesothelioma."

4 And then the last two lines say, "It is our hope that
5 this New York City event can be held at Ground Zero."

6 Was that your idea to try to hold the event at Ground
7 Zero?

8 A. I think so.

9 Q. "To also recognize and honor the 9/11 responders who were
10 exposed to tremendous amounts of asbestos. Joy Wheeler and
11 Dr. Taub are appreciative of any assistance you can provide to
12 make that happen."

13 If we can now look at the bottom half of the letter.

14 It says, "We need your assistance in securing
15 necessary permits in order to use a course running near the
16 World Trade Center on the Westside Highway starting and
17 finishing near the footprint of the World Trade Center."

18 And then there's handwriting at the bottom of this
19 document.

20 Whose handwriting is that?

21 A. Mine.

22 Q. What does it say?

23 A. It says, "Hi, Shelly. I would appreciate anything you can
24 do," and I sign it.

25 Q. Was this letter sent to Sheldon Silver?

FB4YSIL6

Taub - Direct

1 A. I believe so.

2 Q. If you could then turn in your binder to Government Exhibit
3 525-17.

4 Looking just at the top email of this exchange, is
5 this an email between you and Joy Wheeler?

6 A. Yes.

7 Q. Does this concern the letter that we just looked at?

8 A. Yes.

9 MR. GOLDSTEIN: Your Honor, the government offers
10 525-17525-16.

11 THE COURT: Any objection?

12 MR. MOLO: No objection.

13 THE COURT: 525-17 is received.

14 (Government's Exhibit 525-16 received in evidence)

15 MR. GOLDSTEIN: If we could just publish the top
16 portion of this email exchange.

17 BY MR. GOLDSTEIN:

18 Q. This is from you to Joy Wheeler; is that right?

19 A. Yes.

20 Q. It says, "Monday October 3 or Monday October 10 seem okay.
21 Would love to see you. How can we make progress on the
22 website?" And then it says, "I added a line to the letter to
23 Shelly Silver."

24 Is that the handwritten note that we just looked at?

25 A. Yes.

FB4YSIL6

Taub - Direct

1 Q. It says, "If he delivers, I am sure it will cost me."

2 What did you mean by that?

3 A. The same as what I just said for the other letter. I
4 thought it would really be very possible that he would ask for
5 more referrals.

6 Q. What was it about your relationship with Sheldon Silver
7 that made you think that he would ask you for referrals if you
8 asked for his help with this event?

9 A. I had asked -- at the beginning of our relationship, at the
10 very beginning, I had asked if he would convince his company to
11 send -- to donate funds to MARF, and he asked for referrals.
12 That was a pattern.

13 Q. Now, after the letter that we looked at a minute ago that
14 had the handwritten note by you, did Silver agree to meet with
15 you and Joy Wheeler to discuss this matter?

16 A. Yes, he did.

17 Q. Where did you meet with Sheldon Silver?

18 A. We met at his office downtown, at the state office.

19 Q. Who came with you?

20 A. Joy Wheeler.

21 Q. Who did you meet with at Sheldon Silver's state office?

22 A. We met initially with Mr. Silver and with Judy Rapfogel,
23 and then Mr. Silver had another meeting, and we discussed
24 further details with Judy Rapfogel.

25 Q. From those meetings, first with Silver and then with Judy

FB4YSIL6

Taub - Direct

1 Rapfogel, what was your understanding as to whether or not they
2 could help secure the necessary permits for the event?

3 A. I don't know if they could help, but they certainly
4 indicated a willingness to help.

5 Q. Now, after you had that meeting in Silver's office, did you
6 receive a letter from Silver concerning your request for help
7 with this event?

8 A. Yes.

9 Q. Let me direct your attention to Government Exhibit 525-21
10 in your binder.

11 A. Right.

12 Q. Do you recognize 525-21?

13 A. Yes.

14 Q. What is that?

15 A. It's a memo I sent to Joy Wheeler.

16 Q. What did you attach to the memo that you sent to Joy
17 Wheeler?

18 A. The letter I got from Mr. Silver.

19 MR. GOLDSTEIN: Your Honor, the government offers
20 525-21.

21 THE COURT: Any objection?

22 MR. MOLO: No objection.

23 THE COURT: 525-21 is received.

24 (Government's Exhibit 525-21 received in evidence)

25 MR. GOLDSTEIN: Let's just look at the cover email.

FB4YSIL6

Taub - Direct

1 BY MR. GOLDSTEIN:

2 Q. This is from you to joy, and you're attaching a PDF, and it
3 says, "This is the letter I received from Shelly. Did you get
4 a copy? What is the next step?"

5 Then let's look at the letter. Let's look at just the
6 top part of the memorandum letter.

7 A. The top part is a memo from Mr. Silver to myself, and it
8 outlines some of the necessary steps in order to get a permit
9 to do this.

10 Q. If we could look at the bottom of the letter, the last two
11 paragraphs. It says, "It is common that these events are
12 subject to review by the local community board which plays an
13 advisory role.

14 "Some local neighborhoods, including Battery Park City
15 and to a lesser degree the Seaport, have complained about the
16 number of these types of events and the inconveniences they
17 cause -- traffic disruptions, large crowds, loud public address
18 systems.

19 "You should be prepared to discuss how you plan to
20 manage the event and such issues utilizing both your own staff
21 and the NYPD. My office can help you navigate this process if
22 needed."

23 So at this point, what did you understand Silver to be
24 offering?

25 A. Help. He was offering help in negotiating the various

FB4YSIL6

Taub - Direct

1 procedures that needed to be followed to get this done. This
2 is standard operating procedures for all major runs in the
3 city.

4 Q. After you received this letter, what ended up happening
5 with the event?

6 A. It was not held because the Simmons Foundation changed its
7 mind and decided not to participate.

8 Q. So was any further assistance from Sheldon Silver sought?

9 A. Not for that, no.

10 Q. If you could look at Government Exhibit 525-23.

11 What is that document?

12 A. That is a letter to the Mesothelioma Center from Mr. Greg
13 Kirkland.

14 Q. Did you receive this letter?

15 A. Yes.

16 MR. GOLDSTEIN: Your Honor, the government offers
17 525-23.

18 THE COURT: Any objection?

19 MR. MOLO: No.

20 THE COURT: 525-23 is received.

21 (Government's Exhibit 525-23 received in evidence)

22 MR. GOLDSTEIN: Let's just look at the cover email.

23 BY MR. GOLDSTEIN:

24 Q. This is from Greg Kirkland.

25 Can you remind the jury who Greg Kirkland was.

FB4YSIL6

Taub - Direct

1 A. He was the CEO of the Simmons firm, and he was the head
2 administrator, I believe, for the foundation as well. He was
3 on the foundation's board.

4 MR. MOLO: Your Honor, no objection subject to the
5 rulings earlier on these issues.

6 THE COURT: Okay.

7 Proceed.

8 BY MR. GOLDSTEIN:

9 Q. The "To" line is to RNT1@columbia.edu.

10 Is that your email address?

11 A. Yes.

12 Q. It is cc'd to Joy Wheeler. It says, Dr. Taub, please find
13 attached an important letter with regards to the foundation.
14 Regards, Greg."

15 If you could turn to the second page of the letter
16 itself.

17 Let's look at the first paragraph of the letter. In
18 2009, the Simmons firm established the Simmons Mesothelioma
19 Foundation, and then it ends with, "We have decided to not
20 pursue new funding commitments for the foundation."

21 We can then look at the next paragraph.

22 A. They would continue to fund us.

23 Q. Is that what's said in the next paragraph?

24 A. Yes.

25 Q. Let's look at that paragraph.

FB4YSIL6

Taub - Direct

1 "The foundation will continue to honor its current and
2 outstanding commitment to the Columbia University Mesothelioma
3 Center to support mesothelioma research under your direction
4 for years 2012, \$600,000; 2013, \$500,000; and 2014, \$400,000.

5 "We have decided to not pursue the website development
6 project and the New York City Miles for Meso. I will be
7 sending a letter to Assemblyman Silver advising him of our
8 decision and thanking him for his assistance."

9 And then just look at the beginning of the next
10 paragraph as well. "Additionally, because of our changes in
11 the foundation, it is with regret that I announce Joy Wheeler
12 will be transitioning out of her role with the Simmons firm and
13 the Simmons Mesothelioma Foundation effective December 31,
14 2011."

15 Dr. Taub, what was your reaction to receiving this
16 letter?

17 A. I was a bit saddened.

18 Q. Why were you saddened?

19 A. Because I thought that the run would have been a very good
20 way of consolidating lot of mesothelioma support, and I was
21 sorry that it didn't happen.

22 I also liked Joy Wheeler very much because I thought
23 she was a very passionate advocate for mesothelioma people.
24 She was leaving the foundation.

25 Q. After you received this letter, who became your principal

FB4YSIL6

Taub - Direct

1 point of contact at the Simmons firm?

2 A. Joy told me to contact Greg directly.

3 Q. Greg Kirkland?

4 A. Yes.

5 Q. Did you continue to refer patients of yours to Simmons
6 after you received this letter?

7 A. Yes.

8 Q. Why did you keep referring patients to Simmons?

9 A. We had had a good relationship. I wanted to keep it
10 strong, and the Simmons Foundation had other projects besides
11 the direct funding which I thought were extremely important for
12 mesothelioma patients.

13 Q. How would continuing to refer patients to the Simmons firm
14 help further those other projects that you just mentioned?

15 A. I believed that, as I said earlier, firms which support
16 research will give back some of their profits, and I think
17 patients should be referred to those firms preferentially.

18 Q. Did the Simmons firm, the Simmons Foundation, end up
19 fulfilling its commitment to your research program?

20 A. I believe so.

21 Q. Did there come a time when you asked -- withdraw that.

22 You testified earlier -- it seems like hours ago. It
23 may have been hours ago -- that Sheldon Silver helped your son
24 find a job.

25 A. Yes.

FB4YSIL6

Taub - Direct

1 Q. What is your son's name?

2 A. Jonathan Taub.

3 Q. How did it come about that you asked Sheldon Silver for
4 help getting your son a job?

5 A. My son was working in the garment industry, but he had
6 credentials to work in a nonprofit Jewish organization, which
7 is what he wanted to do.

8 Mr. Silver, in addition to being a mesothelioma lawyer
9 and an important state official, also was well known and
10 respected in the Jewish community. Since we had had a friendly
11 relationship over the years, I thought it was appropriate to
12 ask him if he knew anyone who could help my son find a job in
13 that sector.

14 Q. Was your son having difficulty finding a job at the time?

15 A. I believe he did not find one that he wanted. So he was
16 having difficulty.

17 Q. If we can look at Government Exhibit 316.

18 Do you recognize that document?

19 A. Yes.

20 Q. What is this document?

21 A. It's a letter that my son wrote I believe on my computer
22 just sending along his resume to Mr. Silver.

23 MR. GOLDSTEIN: Your Honor, the government offers 316.

24 MR. MOLO: No objection.

25 THE COURT: 316 is received.

FB4YSIL6

Taub - Direct

(Government's Exhibit 316 received in evidence)

MR. GOLDSTEIN: Let's look at the second page of the document. Let's highlight from "Personal and confidential" down to the signature line.

It's to the Honorable Sheldon Silver. "Dear Mr. Silver. Thank you very much for your consideration. As requested, I am enclosing my resume. Please let me know if you require any additional materials or information. Thank you again for your help. Sincerely, Jonathan Taub."

Dr. Taub, did you speak with Sheldon Silver directly about getting his help in finding your son a job?

A. Yes.

Q. After you made that request and your son sent him that information, what did Silver do?

A. I don't know exactly what he did, but he helped get my son a job in a nonprofit Jewish organization, yes.

Q. Do you know whether your son met with Sheldon Silver?

A. I believe he did.

Q. Do you know if it was Sheldon Silver directly or somebody in his office?

A. I don't know.

Q. Now, at the time that you asked for help getting your son this job, were you sending cases to Sheldon Silver?

A. Yes.

Q. What was the connection, if any, between the cases you were

FB4YSIL6

Taub - Direct

1 sending Sheldon Silver and this request for your son?

2 A. I sent the cases to Sheldon Silver in his role as a
3 mesothelioma lawyer and as an important person in New York
4 State, but he also was an important person in the Jewish
5 community, and I really didn't make much of a distinction
6 between those two roles.

7 Q. Did you believe that sending patients to Silver might help
8 in getting him to provide assistance to your son?

9 A. It could.

10 Q. And did Sheldon Silver end up getting your son a job?

11 A. He helped, yes.

12 Q. What was the organization that your son got a job with?

13 A. He got a job with an organization called Ohel, which is a
14 large family services organization in Brooklyn that serves many
15 functions. It will take care of poor families. It will take
16 care of special-needs children and adults. It provides those
17 types of family services.

18 Q. Dr. Taub, what knowledge, if any, did you have as to
19 whether this organization, Ohel, receives state funding?

20 A. I have no knowledge.

21 Q. What knowledge do you have, if any, as to whether Ohel
22 received grants from Sheldon Silver?

23 A. No knowledge whatsoever.

24 Q. Dr. Taub, a couple of minutes ago in your testimony, you
25 referred to Sheldon Silver as a mesothelioma attorney.

FB4YSIL6

Taub - Cross

1 A. Yes.

2 Q. What knowledge, if any, did you have as to whether Sheldon
3 Silver had any experience with asbestos cases?

4 A. He was of counsel to probably the largest mesothelioma firm
5 in the city; otherwise, I had no knowledge of his function.

6 Q. When you sent Sheldon Silver cases, do you know whether he
7 made any contact with the patients of yours who you sent to
8 him?

9 A. I did not know.

10 MR. GOLDSTEIN: Nothing further, your Honor.

11 THE COURT: Okay.

12 Mr. Molo.

13 MR. MOLO: We don't need to do it now, but there is
14 that one issue.

15 THE COURT: There is.

16 CROSS-EXAMINATION

17 BY MR. GOLDSTEIN:

18 Q. Good afternoon, Dr. Taub.

19 A. Good afternoon.

20 Q. I'm Steve Molo. I represent Mr. Silver. We have not met
21 before, have we?

22 A. No.

23 Q. First do no harm. You know what that means; right?

24 A. Yes.

25 Q. It's a well-known saying in the medical profession that the

FB4YSIL6

Taub - Cross

1 patient comes first.

2 A. Yes.

3 Q. When you became a doctor, you also took a hippocratic oath;
4 is that right?

5 A. Yes.

6 Q. In doing so, you vowed to put your patients' interests
7 first?

8 A. The specifics of the hippocratic oath are not quite that,
9 but I do put the patients' interests first, yes.

10 Q. I was going to say, hippocratic oath aside, you've always
11 put your patients' interests first; correct?

12 A. Pretty much.

13 Q. That included when you made suggestions about them seeing a
14 lawyer; correct?

15 A. Yes.

16 Q. You gave them names of law firms to consider representing
17 patients if they had a legal claim?

18 A. Yes.

19 Q. And you, in doing so, put the patients' interests first?

20 A. That's true.

21 Q. And, in suggesting that some patients consider Weitz &
22 Luxenberg, you were acting in the interests of your patients?

23 A. That's correct.

24 Q. I'm going to ask you a little bit more about your career
25 because it's extraordinary.

FB4YSIL6

Taub - Cross

1 You've had what? Fifty years in medicine?

2 A. A little more than that.

3 Q. And your medical degree was from Yale; right?

4 A. Yes.

5 Q. Ph.D. in transplantation biology? Is that what it was from
6 London University?

7 A. Yes. From London University. It was in the faculty
8 biology, and it was in transplantation biology because of my
9 professor.

10 Q. And you were also a research fellow at the National
11 Institute for Medical Research in London?

12 A. Yes.

13 Q. You served as an intern at the New England Medical Center
14 in Boston?

15 A. Yes.

16 Q. You're an associate professor at Mount Sinai here in
17 New York?

18 A. Yes.

19 Q. And actually, the chairman of the Division of Medical
20 Oncology at the Medical College of Virginia; is that right?

21 A. That's correct.

22 Q. And then the American Cancer Society professor for clinical
23 oncology?

24 A. Yes.

25 Q. And since 1981, you've held a series of prestigious

FB4YSIL6

Taub - Cross

1 positions at Columbia; correct?

2 A. That's right.

3 Q. There's probably not a whole lot of people in the medical
4 faculty that have an association with the medical school longer
5 than yours, are there?

6 A. There are a few.

7 Q. Not many; right?

8 A. No.

9 Q. You have the rare distinction -- you were rather modest on
10 your direct examination about being board certified in actually
11 four medical specialties; right?

12 A. Yes.

13 Q. There are not many doctors that have four board
14 certifications, are there?

15 A. No. There are very few.

16 Q. I just want to show you -- we don't have to spend a lot of
17 time on it -- Defense Exhibit 2 I believe.

18 THE COURT: Three I think.

19 MR. MOLO: If you would just take a look through it.

20 BY MR. MOLO:

21 Q. I'm going to direct your attention specifically to the last
22 page which indicates when it was prepared.

23 A. September 2013.

24 Q. Can you say what it is generally.

25 A. I'm sorry?

FB4YSIL6

Taub - Cross

1 Q. Can you say what this is.

2 A. This is my curriculum vitae.

3 Q. Did you prepare it?

4 A. With some assistance.

5 MR. MOLO: Your Honor, I move for admission of Defense
6 Exhibit 3.

7 MR. GOLDSTEIN: No objection.

8 THE COURT: Defense Exhibit 3 is received.

9 (Defendant's Exhibit 3 marked for identification)

10 BY MR. MOLO:

11 Q. This, at least of 2013, a full listing of your medical work
12 and professional accomplishments; is that right?

13 A. That's a pretty good listing.

14 Q. It indicates that you've won fellowships and awards from
15 the National Institute of Health; is that right?

16 A. Yes.

17 Q. The Leukemia Society Scholar Award as well; right?

18 A. Yes.

19 Q. The Emil Conason Memorial Research Award from Mount Sinai?

20 A. Correct.

21 Q. And also the Elliot Osserman Award from the Israel Cancer
22 Research Fund; right?

23 A. Yes.

24 Q. I counted them up, and I may have it wrong, but it looks
25 like you've published, at least as of this version of your CV,

FB4YSIL6

Taub - Cross

1 155 scholarly articles. Is that right?

2 A. Yes. That's right.

3 Q. There have probably been some more since then?

4 A. Yes, there have.

5 (Continued on next page)

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FB45sil7

Taub - Cross

1 BY MR. MOLO:

2 Q. And these articles have appeared in, some of them in some
3 of the most prestigious publications in your field like Nature?

4 A. Yes.

5 Q. In Lancet, yes?

6 A. Yes.

7 Q. The New England Journal of Medicine?

8 A. Yes.

9 Q. And your work at Columbia, you have been an extraordinary
10 researcher as well as a leader there at the medical school,
11 right?

12 A. I -- I like what I do and I'm having a good time at
13 Columbia. I had a good time at Columbia.

14 Q. Your work has had a positive impact on a lot of people's
15 lives, hasn't it?

16 A. I hope.

17 Q. You are a healer as well as a scholar, aren't you?

18 A. I'm -- I was put on this earth, I think, to take care of
19 those patients. So, I'm very passionate about that.

20 Q. And you would not engage in a bribery scheme involving your
21 patients, would you?

22 MR. GOLDSTEIN: Objection, your Honor.

23 THE COURT: Sustained.

24 Q. You would not have some explicit agreement to send patients
25 in exchange for grants, would you?

FB45sil7

Taub - Cross

1 MR. GOLDSTEIN: Objection, your Honor.

2 THE COURT: Just rephrase the question.

3 Q. You would not have --

4 THE COURT: Did you.

5 Q. You did not have an explicit agreement to exchange patients
6 for grants, did you?

7 A. I did not.

8 Q. Now, you founded the Meso Center at Columbia in 2002, is
9 that right?

10 A. Around that time.

11 Q. And the title that you hold, the Vivian and Seymour
12 Milstein Family Professor of Medicine at Columbia, that is
13 named after the Milstein family, right?

14 A. Yes.

15 Q. And they have been great supporters of your Mesothelioma
16 Center, correct?

17 A. They have been, yes.

18 Q. As I understand it, it is a tremendously wealthy family
19 that made a fortune in building supplies and real estate and
20 they own Emigrant bank; is that right?

21 A. Correct.

22 Q. Wasn't there some history in the family, too, involving
23 asbestos and someone who was ill? They owned a factory or
24 something?

25 A. I believe there was, yes.

FB45sil7

Taub - Cross

1 Q. And the Gershwin family as well, they're also a wealthy New
2 York family that supports you?

3 A. Yes, they are.

4 Q. And I guess you also received funding from pharmaceutical
5 companies, is that correct?

6 A. The Mesothelioma Center conducted some clinical trials with
7 pharmaceutical company support.

8 Q. And it would be financial support from pharmaceutical
9 companies?

10 A. For the trial.

11 Q. For the trials. Of course.

12 A. Yes.

13 Q. And that would be companies like, I think Lily -- Eli-Lily
14 was one?

15 A. Certainly.

16 Q. J&J -- Johnson & Johnson?

17 A. Yes.

18 Q. Genentech?

19 A. Yes.

20 Q. Schering?

21 A. Yes.

22 Q. Pharmeon?

23 A. I don't recall Pharmeon but it is possible. They may have
24 merged with someone else.

25 Q. How about Sanofi?

FB45sil7

Taub - Cross

1 A. Sanofi, yes.

2 Q. So you did a lot of great work at the Meso Center before
3 you got these two state grants that we have heard about today,
4 correct?

5 A. Yes.

6 Q. And donors like the Milsteins and the Gershwins are
7 important to your success?

8 A. They were a big help.

9 Q. Do you feel like you owe a responsibility to them?

10 A. I certainly owe them progress reports.

11 Q. And so you do report with them, you meet with them, right?

12 A. I have met with them, yes.

13 Q. Do you feel a sense of accountability to them?

14 A. Well, I feel the sense of accountability in the sense that
15 donated funds should be used in a manner which is transparent.

16 Q. Now, Columbia has rules that govern the conduct of tenured
17 faculty like you, is that right?

18 A. I believe so.

19 Q. And those rules would prohibit doctors from engaging in
20 bribery schemes where they refer patients in exchange for grant
21 money, right?

22 MR. GOLDSTEIN: Objection, your Honor.

23 A. I'm not familiar with those rules.

24 Q. Okay --

25 THE COURT: I haven't -- he has answered. He doesn't

FB45sil7

Taub - Cross

1 know.

2 A. I don't know is the answer.

3 Q. Well, I mean, you wouldn't expect that if you were to have
4 engaged in bribery schemes Columbia would want you on the
5 faculty, right?

6 MR. GOLDSTEIN: Objection, your Honor.

7 THE COURT: Sustained.

8 Q. Do the rules of Columbia prohibit you from using a patient
9 to gain some kind of financial interest for the medical center?

10 MR. GOLDSTEIN: Objection.

11 THE COURT: Overruled.

12 If you know.

13 A. Please repeat the question.

14 Q. Sure.

15 The rules of Columbia, would they allow you to use a
16 patient to gain some kind of financial interest for the medical
17 center? Let me re-ask the question. I can tell by the look
18 your Honor face it is a bad question.

19 A. I don't know what you're talking about.

20 Q. It is a bad question.

21 A. Yes.

22 Q. The rules of Columbia would not allow a doctor to refer
23 patients to some source in order for the hospital to again a
24 financial gain for that, right? There is anti-kickback rules,
25 aren't there.

FB45sil7

Taub - Cross

1 A. If I refer a patient to an orthopedist who works in the
2 hospital, the hospital is going to get some benefit when you
3 refer a patient to another doctor. So, I mean, that revenue.
4 I'm not sure what you are driving at.

5 Q. Okay, and those kinds of referrals happen from time to
6 time?

7 A. Yes. Of course.

8 Q. Since your appointment to the Columbia faculty have you
9 faithfully and professionally satisfied your obligations of
10 your employment, title, and tenure?

11 MR. GOLDSTEIN: Objection.

12 THE COURT: Overruled.

13 A. I believe I have, yes.

14 Q. In fact, every year you certify to Columbia that you
15 observe all of the ethical principles of your profession, don't
16 you?

17 A. I don't do it every year but I sign a conflict of interest
18 form, yes.

19 Q. And I take this those ethical principles would prohibit you
20 from engaging in bribery schemes involving your patients,
21 correct?

22 MR. GOLDSTEIN: Objection.

23 THE COURT: Overruled.

24 A. I don't know if it specifically said that but I would
25 not -- one is expected to have ethical conduct in general.

FB45sil7

Taub - Cross

1 Q. Okay. And I'm going to show you what's marked Defendant's
2 Exhibit 4 and ask you to take a look at it. One moment,
3 please? (Pause)

4 Doctor, do you recognize that document?

5 A. I'm sorry? Yes.

6 Q. Do you recognize this document?

7 A. Yes.

8 Q. Without going into detail, can you describe, generally,
9 what it is?

10 A. It's a for reappointment -- it is the application for
11 reappointment to the medical staff.

12 Q. And did you fill one of these out periodically?

13 A. Yes.

14 Q. Is your signature on the back of this document?

15 A. One second --

16 Q. Last page.

17 A. Yes.

18 Q. And the first page, that is for New York Presbyterian
19 Hospital, right? Columbia Presbyterian Medical Center?

20 A. Yes.

21 MR. MOLO: Your Honor, I move admission of Defendant's
22 Exhibit 4.

23 MR. GOLDSTEIN: No objection.

24 THE COURT: Defense 4 is received.

25 (Defendant's Exhibit 4 received in evidence)

FB45sil7

Taub - Cross

1 BY MR. MOLO:

2 Q. If you turn to the last page and if we can put this up on
3 the screen, please, and you look at the very first paragraph
4 and the second to the last sentence of it which I have
5 highlighted, it says that: I also agree to observe all of the
6 ethical principles of my profession.

7 Correct?

8 A. Yes.

9 Q. And you signed that and put your signature at the bottom of
10 that page, right?

11 A. Yes.

12 Q. We can take that down, please.

13 After the publicity surrounding the criminal charges
14 against Mr. Silver Columbia made a decision, you said, to
15 remove you from your tenured position; is that correct?

16 A. They did that, yes. They made a decision to do that.

17 Q. Mr. Silver was charged on January 22nd of 2015? Do you
18 recall?

19 MR. GOLDSTEIN: Objection, your Honor.

20 A. I don't recall the date.

21 THE COURT: Overruled.

22 Q. Okay.

23 A. But that's okay.

24 Q. And January 23rd, 2015, the very next day, you were told
25 you would have no position or job duties or salary as of July

FB45sil7

Taub - Cross

1 22nd of 2015, correct?

2 A. Yes.

3 Q. And you were also told that your appointment as the Vivian
4 and Seymour Milstein Family Professor of Medicine would not be
5 renewed beyond July 22nd of 2015, correct?

6 A. That's correct.

7 Q. You disagreed with that decision, right?

8 A. I did disagree with that, yes.

9 Q. Sure, because it was wrong; correct?

10 A. I believe that it may be misguided. It did not follow the
11 procedures.

12 Q. And you knew that you had faithfully and professionally
13 satisfied your obligations of your employment and your title
14 and your tenure, correct?

15 A. I had no reason to doubt it at the time.

16 Q. Sure.

17 And, in fact, you were sufficiently upset about being
18 wronged that you went and saw a lawyer about it, right?

19 A. Yes.

20 Q. And the lawyer that you saw was an experienced lawyer who
21 understood issues like this, correct?

22 A. Yes.

23 Q. And you retained this lawyer?

24 A. Yes, I am.

25 Q. And you have faith in your lawyer?

FB45sil7

Taub - Cross

1 A. I guess I do.

2 Q. And your lawyer, on your behalf, sued Columbia in the New
3 York County Supreme Court because of the action they took
4 against you?

5 A. He sued them for due process.

6 Q. Must have been very painful given your long association
7 with Columbia.

8 A. I love my job at Columbia and, yes, I'm very distressed
9 about it.

10 Q. But you still went ahead and filed the suit, right?

11 A. I wanted to continue working.

12 Q. Sure.

13 I'm going to show you what's marked Plaintiff's
14 Exhibit 5. Would you take a moment to look at the document?
15 Do you recognize the document, Doctor?

16 A. Yes.

17 Q. Is it the lawsuit that you filed against Columbia in New
18 York County Supreme Court?

19 A. It's related to the lawsuit, yes.

20 Q. And is your signature that appears on the last page, your
21 verification?

22 A. Yes.

23 MR. MOLO: Your Honor, I would move for admission of
24 Defendant's Exhibit 5.

25 MR. GOLDSTEIN: No objection, your Honor.

FB45sil7

Taub - Cross

1 THE COURT: Okay. Defendant's Exhibit 5 will be
2 received.

3 (Defendant's Exhibit 5 received in evidence)

4 BY MR. MOLO:

5 Q. May we publish this, please?

6 So, that's the caption of the case, correct,
7 Dr. Robert Taub versus Columbia University?

8 A. Yes, it is.

9 Q. And if we go to paragraph 44 there are no page numbers on
10 the bottom of the document but paragraph 44 it says:

11 Plaintiff-Petitioner accepted Defendant-Respondent's offer of
12 employment, title, and tenure following Respondents' December
13 10, 1980, letter, correct?

14 A. Yes.

15 Q. Then the next paragraph, paragraph 45 says that:

16 Plaintiff-Petitioner -- that's you, correct?

17 A. Yes.

18 Q. Has faithfully -- can we highlight this, please -- has
19 faithfully and professionally satisfied the obligations of his
20 employment, title, and tenure since that time, correct?

21 A. Yes.

22 Q. And on the very back page, Doctor, you stated that, Robert
23 Taub, being duly sworn, states as follows: I am the
24 Petitioner. I have reviewed the contents of the foregoing
25 complaint and the verified Article 78 petition. The

FB45sil7

Taub - Cross

1 information contained therein is true and correct to the best
2 of my knowledge.

3 And you signed that, right?

4 A. Yes.

5 Q. You swore that before a notary public, right?

6 A. Yes, I did.

7 Q. You are currently still serving in your position at
8 Columbia, correct?

9 A. Yes.

10 Q. And you very much feel rightfully so, correct?

11 A. Yes, I do.

12 Q. You have served as an expert witness in asbestos personal
13 injury cases, correct?

14 A. Yes.

15 Q. You are sometimes asked to testify as a treating physician
16 in asbestos personal injury cases?

17 A. Yes.

18 Q. How many asbestos personal injury cases would you estimate
19 that you have been involved in either as a treating physician
20 or as an expert witness?

21 A. Five. Maybe six, seven. Not more.

22 Q. Not more than that in terms of court testimony or generally
23 at all?

24 A. Both.

25 Q. Both, okay.

FB45sil7

Taub - Cross

1 A. Yes, I have testified in other -- a long time ago I
2 testified in many other types of cases but recently I have done
3 very little.

4 Q. And a good lawyer can provide great assistance to a
5 mesothelioma victim, correct?

6 A. Absolutely.

7 Q. If a patient has been exposed to asbestos it may be
8 possible to bring a personal injury claim against the party
9 that exposed them to that asbestos, right?

10 A. Correct.

11 Q. That could be the manufacturer of the asbestos?

12 A. Yes.

13 Q. It might also be a company that used asbestos in their
14 products?

15 A. Yes.

16 Q. And I believe you said a good lawyer can ferret out the
17 patient's exposure, right?

18 A. It requires investigation and requires a lot of work.

19 Q. So, it is important -- let me just back up and ask you one
20 more questions.

21 Usually, very sadly, most of these patients that you
22 see have very little time to live when you see them, is that
23 right?

24 A. Yes. That's true.

25 Q. So, if they are going to pursue a legal claim and be part

FB45sil7

Taub - Cross

1 of that pursuit there is not a lot of time to do that for them,
2 sadly?

3 A. It's good that it should get done quickly.

4 Q. Okay.

5 A. Reasonably quickly.

6 Q. So, it is particularly important that a mesothelioma victim
7 find a good lawyer in order to bring a successful personal
8 injury claim, correct?

9 A. Yes.

10 Q. And you know that the lawyers that handle these cases
11 handle them on a contingent fee basis, right?

12 A. I do.

13 Q. You say that your patients come from all over the country?

14 A. Yes.

15 Q. As of about a year ago half of your patients were using
16 Weitz & Luxenberg; is that right?

17 A. I don't know exactly, but it would not be a surprising
18 figure.

19 Q. Because even if you didn't refer a patient to
20 Weitz & Luxenberg it is quite possible that they would go to
21 Weitz & Luxenberg on their own, correct?

22 A. Yes.

23 Q. And, in fact, patients have come to you already represented
24 by Weitz & Luxenberg?

25 A. Yes.

FB45sil7

Taub - Cross

1 Q. Now, Weitz & Luxenberg gets cases because they are a very
2 good firm, correct?

3 A. Yes.

4 Q. And, in fact, the Simmons firm that we have heard about, I
5 think they've actually referred cases to Weitz & Luxenberg; is
6 that right?

7 A. And visa versa, I think, but I think that, yes, you're
8 correct.

9 Q. And you have had relationships with Weitz & Luxenberg
10 lawyers apart from Mr. Silver, correct?

11 A. Yes.

12 Q. In fact, there was a lawyer named Bonnie Steinwolf that you
13 had a relationship with, correct?

14 A. When she worked there, yes.

15 Q. When she was at Weitz & Luxenberg?

16 A. Yes.

17 Q. And also a lawyer named Jim Long who was at
18 Weitz & Luxenberg?

19 A. Correct.

20 Q. And you suggested their names to patients, correct?

21 A. I referred a patient to Bonnie Steinwolf after she left
22 Weitz & Luxenberg but, still to her, yes.

23 Q. While she was at Weitz & Luxenberg didn't she and Mr. Long
24 also have a patient of yours that you had suggested that --

25 A. I think that they had a patient and they sent a patient to

FB45sil7

Taub - Cross

1 me.

2 Q. Okay, so Weitz & Luxenberg has actually sent patients to
3 you?

4 A. Yes.

5 Q. So in that sense there is a --

6 A. For treatment, yes.

7 Q. Of course, because you are -- you are the Weitz & Luxenberg
8 of the medical world and Weitz & Luxenberg is the Robert Taub
9 of the legal world, correct?

10 MR. GOLDSTEIN: Objection.

11 THE COURT: Sustained.

12 A. I'm not sure --

13 THE COURT: Don't answer the question, Dr. Taub.

14 Q. What I mean to say is that it would make sense for a firm
15 like Weitz & Luxenberg to send someone with your skill and
16 ability, correct?

17 MR. GOLDSTEIN: Objection.

18 THE COURT: Sustained.

19 Q. You have colleagues, as I understand it, that have
20 suggested that their patients go to Weitz & Luxenberg?

21 THE COURT: If you know.

22 A. I believe so. I don't know chapter and verse, but I
23 believe so. Yes.

24 Q. Dr. Mark Ginsburg, is he a prominent cancer doctor?

25 A. Yes.

FB45sil7

Taub - Cross

1 Q. He's at Columbia?

2 A. Yes.

3 Q. And he regularly refers patients to, or suggests that
4 patients go to a lawyer named Michael Roberts at
5 Weitz & Luxenberg?

6 MR. GOLDSTEIN: Objection.

7 THE COURT: Sustained.

8 Q. If you know.

9 A. I don't know.

10 MR. GOLDSTEIN: Objection.

11 THE COURT: He doesn't know.

12 Q. Okay.

13 Do you know of other doctors throughout the country
14 that have sent, suggested that their patients see
15 Weitz & Luxenberg?

16 A. As I said earlier, a number of my patients have already
17 been referred to Weitz & Luxenberg when I see them so I assume
18 that that's the case.

19 Q. But how about other doctors that you know? Do you know
20 other doctors that have suggested that their patients see
21 Weitz & Luxenberg?

22 MR. GOLDSTEIN: Objection.

23 THE COURT: Sustained.

24 Q. In fact, of the handful of times that you have served as an
25 expert witness you have actually served as an expert witness

FB45sil7

Taub - Cross

1 for Weitz & Luxenberg, haven't you?

2 A. On at least on two occasions.

3 Q. On two occasions.

4 A. That I can recall, yes.

5 Q. Okay.

6 And on those occasions you were paid for your time,
7 correct?

8 A. Yes.

9 Q. And I believe your time is charged, it should be, at like
10 \$1,750 an hour for expert witness work?

11 A. Yes.

12 Q. And are you sure it wasn't more than time times that you
13 worked for Weitz & Luxenberg as an expert?

14 A. Those are the two I remember.

15 Q. It is possible there was more?

16 A. Not much more. It may have been three but that's about it.
17 I don't -- yeah.

18 Q. Thank you.

19 Now, Dr. Taub, you are not licensed to practice law,
20 are you?

21 A. No.

22 Q. You are not a lawyer with a law degree, I should say. You
23 don't have a law degree either, do you?

24 A. No.

25 Q. Your patients come to you because of your medical skills?

FB45sil7

Taub - Cross

1 A. Yes.

2 Q. And you have suggested to some of these patients that they
3 hire a lawyer, right?

4 A. Yes, I have.

5 Q. And if they don't have lawyers and you make the suggestion
6 the patient is -- well, let me ask a different question.

7 You have actually suggested several specific law firms
8 to patients over time, correct?

9 A. Yes.

10 Q. In addition to Weitz & Luxenberg there is a firm called
11 Belluck and Fox; you have suggested that firm?

12 A. Yes.

13 Q. And you have suggested patients to see the Simmons firm,
14 correct?

15 A. Yes.

16 Q. In fact, are there other names that you can recall that you
17 may have suggested?

18 A. Yes.

19 Q. Do you recall their names?

20 A. One is Levy, Phillips & Konigsberg.

21 Q. A patient is free to reject your suggestion, correct?

22 A. Yes.

23 Q. A patient can take what you tell them and go think about
24 it, right?

25 A. Yes.

FB45sil7

Taub - Cross

1 Q. You can choose to do independent research on the Internet
2 about these law firms?

3 A. Yes.

4 Q. They can talk to their friends and family about these law
5 firms, is that right?

6 A. Yes.

7 Q. They can talk to other doctors about your suggestion,
8 correct?

9 A. Yes.

10 Q. A patient can choose to talk to other lawyers besides the
11 ones that you might suggest, correct?

12 A. Correct.

13 Q. A patient can choose to meet with the law firm once you
14 suggest it, correct?

15 A. Yes.

16 Q. The patient can choose to ask that law firm about its
17 experience, correct?

18 A. Yes.

19 Q. The patient could choose to ask to meet with the actual
20 lawyer who will try their case if it went to trial, correct?

21 A. Yes. That's correct.

22 Q. And the patient can ask the law firm about the strategy
23 that it might use, right? It can choose to do this?

24 A. Yes.

25 Q. The patient can choose to meet with the law firm more than

FB45sil7

Taub - Cross

1 once before making a decision on hiring it, right?

2 A. That's right.

3 Q. And, ultimately, though -- ultimately -- the patient
4 decides whether to retain any law firm that you might suggest,
5 correct?

6 A. That's right.

7 Q. Some patients take your suggestions?

8 A. Yes. Some have.

9 Q. Some patients reject your suggestions, right?

10 A. Yes. That's true.

11 Q. And there is probably situations where, I don't know if you
12 know this is happening, where you suggested a law firm and the
13 law firm decided not to represent the patient for some reason?

14 A. That's happened.

15 Q. I take it, though, that in all of these circumstances, you
16 only suggested that your patients contact law firms that are
17 excellent in representing mesothelioma victims?

18 A. That's correct.

19 Q. Okay, and I take it you actually know individuals at
20 various law firms?

21 A. Yes, I do.

22 Q. And if a patient lived in New York City there might be more
23 incentive to use Weitz & Luxenberg?

24 A. If the patient lived in the New York area of course it
25 would be better to send them to a local firm like

FB45sil7

Taub - Cross

1 Weitz & Luxenberg, sure.

2 Q. Sure.

3 And sometimes you might even give a patient a list of
4 firms, right?

5 A. We have generally not done that as a formal list, no, but I
6 would suggest more than -- I have, on occasion, suggested more
7 than one law firm.

8 Q. Okay. You, yourself, have no personal financial stake in
9 which lawyer your patient chooses, correct?

10 A. No, I do not.

11 Q. You are not paid any money as a result of your patient
12 choosing Weitz & Luxenberg, correct?

13 A. No.

14 Q. As you have explained, and I think we heard a little
15 earlier today from Mr. Weitz himself, mesothelioma is just an
16 awful disease, right?

17 A. Horrible.

18 MR. GOLDSTEIN: Objection, your Honor.

19 THE COURT: Overruled. I doubt he heard Mr. Weitz'
20 testimony.

21 MR. MOLO: I'm sorry, that's not a good question in
22 terms about incorporating Mr. Weitz.

23 THE COURT: That is a terrible question.

24 MR. MOLO: I was being kind to myself; it was a bad
25 question, terrible question.

FB45sil7

Taub - Cross

1 BY MR. MOLO:

2 Q. Anyway, mesothelioma is an awful disease, correct?

3 A. Yes.

4 Q. I guess you talked a little bit about some of the symptoms
5 that they include things like severe chest wall pain for some
6 people?

7 A. Yes.

8 Q. Abdominal pain?

9 A. It can be quite painful, yes.

10 Q. Coughing up blood?

11 A. That's uncommon but it can happen.

12 Q. You mentioned bowel function?

13 A. That's typical for peritoneal mesothelioma.

14 Q. And blood clotting as well?

15 A. No, that's not a main symptom of mesothelioma. You can
16 have problems with veinous return but that's a very advanced
17 disease.

18 Q. Are there other significant symptoms?

19 A. Those are bad enough.

20 Q. I would say. Yeah, I would say.

21 This disease, mesothelioma, you said it is certainly
22 not as common as the lung cancer that people get from smoking
23 cigarettes, right?

24 A. It is 180,000 to 200,000 lung cancers from cigarettes and
25 3,000 to 3300 cases of mesothelioma. So, it is a 150 to 3

FB45sil7

Taub - Cross

1 ratio.

2 Q. And so I take it this is reflected somewhat in the research
3 finding that is available, right?

4 A. Yes.

5 Q. With less money generally available for mesothelioma?

6 A. Yes.

7 Q. Mesothelioma affects New Yorkers to a significant extent,
8 doesn't it?

9 THE COURT: Rephrase the question. I don't know what
10 that means.

11 Q. Sure.

12 Let me be more precise, Doctor. In terms of
13 statistics you have seen about rankings of states with the
14 largest number of mesothelioma victims, doesn't New York
15 usually rank around the fourth?

16 A. Yes. The New York area.

17 Q. The New York area.

18 A. Yes.

19 Q. Is fourth in terms of most cases of mesothelioma a year?

20 A. Yes.

21 Q. Is that due to the historical factories that have been here
22 and --

23 A. It is due mainly to two entities, one of them was Johns
24 Manville, in Manville, New Jersey, and the other was the
25 Brooklyn Navy Yard. Those two were the two largest polluters

FB45sil7

Taub - Cross

1 of asbestos. The World Trade Center, the lower 55 floors of
2 Tower One and Tower Two were floored with asbestos tile.

3 Q. So when those tiles -- those floors came down --

4 A. Those tiles were vaporized.

5 Q. And all of that asbestos went into the air?

6 A. Yes.

7 Q. All throughout Manhattan?

8 A. There were tons of asbestos in those two buildings.

9 Q. I believe that we have had some very sad situations where
10 some early responders to the scene have actually died from
11 mesothelioma already?

12 A. We have only identified I think one or two cases but I
13 suspect there will be more.

14 Q. Obviously a very real threat.

15 A. Uh-huh.

16 Q. You have to say yes or no. I'm sorry.

17 A. Yes. I'm sorry.

18 Q. Now, it is also, I understand it, not a disease that people
19 inherit through their genes like some other diseases, right?

20 A. Actually, in the last year or two we have identified some
21 genes which are familial which may predispose you to
22 mesothelioma; gene BAP-1.

23 THE COURT: Can I see the attorneys at side bar?

24 MR. MOLO: Sure.

FB45sil7

Taub - Cross

1 (At side bar)

2 THE COURT: Walking through the symptoms which we have
3 now done several times is fascinating but I have the feeling
4 that you are filibustering to get to the end of the day. What
5 point are you trying to make?

6 MR. MOLO: With this?

7 THE COURT: Yes.

8 MR. MOLO: You want the punch line before you have got
9 it? The funding was well justified.

10 THE COURT: Is it going to come soon?

11 MR. MOLO: It is coming soon. I have moved through
12 quite a lot of material in a very short period of time.

13 THE COURT: You have gone through several folders.

14 MR. MOLO: I have.

15 THE COURT: I am concerned about the last half hour
16 where we are talking about symptoms we have talked about
17 before.

18 MR. MOLO: I was already moving on to the propensity
19 of it or how common it is in New York, I guess.

20 THE COURT: We have already done that.

21 MR. MOLO: I am moving. I am moving. I moved through
22 a lot -- if we are going to weigh through quickness I have done
23 a lot in a short time.

24 THE COURT: But you are done on this, on the symptoms?

25 MR. MOLO: Yes. I'm not going to ask him any more

FB45sil7

Taub - Cross

1 symptoms.

2 THE COURT: What is the relevance of the funding, that
3 it is important? No one is saying that it is not an important
4 disease.

5 MR. MOLO: Relevant or important.

6 THE COURT: No one is saying that mesothelioma is not
7 a disease that warrants funding to study it. I'm not sure why
8 that's relevant.

9 MR. MOLO: Because they're claiming the only reason he
10 got the money was because of private -- Judge, I have been
11 laser-like in getting through this and I am cross-examining.

12 THE COURT: You were doing quite well until you
13 wandered through 10 minutes on symptoms.

14 MR. MOLO: He is tired, by the way.

15 THE COURT: I know he is tired.

16 MR. MOLO: So, I mean.

17 THE COURT: All right.

18 MR. MOLO: All right.

FB45sil7

Taub - Cross

(In open court)

BY MR. MOLO:

Q. The people that get it, mesothelioma, often are some working class people that have been exposed to it through the kinds of things that you have talked about?

A. Many of them.

Q. In fact, workers who had come home with it on their clothes it might be -- the household might contract it from that, right?

A. Yes.

Q. So, the people of New York, specifically, benefit greatly from your research on mesothelioma, correct?

A. I hope that they have some benefit. I don't know exactly how much benefit they get but, yes, I would agree.

Q. So the State of New York was doing the right thing for New Yorkers in helping to fund your research?

MR. GOLDSTEIN: Objection.

THE COURT: In his opinion.

What was your opinion? Was it a good research grant?

THE WITNESS: Are you asking me?

THE COURT: Yeah. What's your opinion. That's what he is asking you.

BY MR. MOLO:

Q. For New Yorkers, was the State of New York doing the right thing?

FB45sil7

Taub - Cross

1 THE COURT: In his opinion.

2 MR. MOLO: Yes.

3 THE WITNESS: Absolutely, yes.

4 THE COURT: It would have been right or they would
5 have given you more money, I bet.

6 THE WITNESS: Correct.

7 BY MR. MOLO:

8 Q. Because you were doing good work for the people of New
9 York, right?

10 A. I would hope so, yes.

11 Q. I am going to ask you some questions about that very nice
12 award that you received from the American Cancer Society.

13 A. Okay.

14 Q. The award was called the Collaborator Award; what was it?

15 A. The Collaborator Award was awarded because of the fact that
16 many of my patients were admitted for therapy at Columbia to
17 the Hope Lodge.

18 Q. And they called it part of its awards, Awards in Medical
19 Excellence, correct?

20 A. Yes.

21 Q. And this was an annual event?

22 A. It is annual event, yes.

23 Q. Have you been more than once?

24 A. I have not been awarded more than once. The one, Dr. Owen
25 O'Connor was one of the awardees who is a colleague of mine the

FB45sil7

Taub - Cross

1 year before.

2 Q. I don't want to presume anyone's knowledge so can you just
3 briefly describe to the jury what the American Cancer Society
4 is?

5 A. The American Cancer Society is simply the largest society
6 in the country which is devoted to the general education for
7 patients and doctors about cancer and to maintaining cancer
8 statistics and to familiarize patients and doctors with the
9 latest research. That's what they do. They also have people
10 like me go around the state and educate people about cancer,
11 doctors about cancer. That's what I did in 1977.

12 Q. It is a long affiliation with the organization?

13 A. What?

14 Q. It is a long affiliation you have had with the
15 organization?

16 A. Yes, it is.

17 Q. Now, these awards were given, I think the Judge asked you
18 about was there a dinner -- was there a reception first, is
19 that more of what the awards ceremony was, a cocktail party?

20 A. This was a fund raising event for the American Cancer
21 Society, that's what it was, and you were supposed to buy
22 tables for their hors d'oeuvres and contribute.

23 Q. Do you know how much they raised at the event?

24 A. I don't. I know it was over something like \$200,000.
25 Something like that.

FB45sil7

Taub - Cross

1 Q. It was in a ball room, right, at a Hotel here in New York?

2 A. Yes.

3 Q. The Westin, I believe?

4 A. Yes.

5 Q. And as with all of these events we saw there was a printed
6 program, right?

7 A. Yes.

8 Q. I forget the government exhibit number but can we put the
9 program up, please?

10 Can we go to the inside --

11 MR. GOLDSTEIN: 376.

12 THE COURT: Exhibit 376.

13 Q. Yes, Government Exhibit 376.

14 Can we go to the inside page of that? I am going to
15 focus over on the right side, if we can make that larger,
16 Awards of Medical Excellence, the honoring part.

17 So, inside the program it is actually listing the
18 honorees, correct?

19 A. Yes.

20 Q. You were not the only honoree at that event, were you?

21 A. No, I was not.

22 Q. Okay, the first honoree was Dr. Alisan Goldfarb, right?

23 A. Correct.

24 Q. And Alisan Goldfarb is a breast surgeon here in New York?

25 A. Yes.

FB45sil7

Taub - Cross

1 Q. And assistant professor at Mount Sinai, correct?

2 A. Yes.

3 Q. I think she received her medical degree at Mount Sinai in
4 1975?

5 A. Yes.

6 Q. So she has been a doctor for a long time?

7 A. Yes.

8 Q. Do you know her?

9 A. Yes.

10 Q. Have you worked with her?

11 A. No, I have not.

12 Q. But you know of her reputation?

13 A. Yes.

14 Q. Her reputation is excellent, correct?

15 A. Yes.

16 Q. And she received the Physician of Distinction Award. Do
17 you know what that means?

18 A. She received the Physician of Distinction Award for her
19 help also, as well, as she's well known.

20 Q. And well-regarded in the medical community?

21 A. Yes.

22 Q. You would agree she was a worthy recipient of the Physician
23 of Distinction Award?

24 A. Do I agree? I don't determine it but I certainly don't
25 think it is misplaced.

FB45sil7

Taub - Cross

1 Q. Okay.

2 And the third honoree down there was a woman named
3 Susan Rotenstreich, correct?

4 A. Yes.

5 Q. And she received the Humanitarian Award, correct?

6 A. Yes.

7 Q. And she is a certified health care professional in what is
8 referred to as complementary medicine?

9 A. I don't know those details.

10 Q. Do you know what complementary medicine is?

11 A. Yes. It is medicine that is not doctoring.

12 Q. And as far as -- had you known Ms. Rotenstreich before she
13 got this award?

14 A. I did not but I did meet her there.

15 Q. And she, too, was a worthy recipient of the award, as far
16 as you knew?

17 A. Well, yes.

18 Q. Okay. And both, all three of your bios are in the program,
19 correct?

20 A. Yes.

21 Q. Now, I heard your testimony -- there is yours and
22 Dr. Goldfarb's. We can take that down. Thank you.

23 As I understand it Mr. Silver was invited by the
24 American Cancer Society at this event, right?

25 A. Yes.

FB45sil7

Taub - Cross

1 Q. And, however, you paid for his ticket, correct?

2 A. Yes.

3 Q. You did that as an act of friendship?

4 A. Well, I did it also because if he were to be invited, they
5 could not pay his expenses.

6 Q. American Cancer Society could not pay for his ticket?

7 A. Correct, so they asked if I would, and I did.

8 Q. And as an act of friendship you did this?

9 A. Yes.

10 Q. Now, Mr. Silver has supported the American Cancer Society
11 apart from this event, hasn't he?

12 A. I don't know that he has. I'm not aware of it, actually,
13 but it is possible.

14 Q. Okay.

15 He actually left that event early, didn't he?

16 THE COURT: The question is did he leave the event
17 early.

18 A. I don't know. Because this was late in the event. He may
19 have left before the hors d'oeuvres but I don't remember.

20 Q. I'm sorry, he may have left before?

21 A. Before the hors d'oeuvres were served.

22 Q. Do you know how many events like that Mr. Silver attended
23 in May of 2011?

24 A. I don't.

25 Q. Would you be surprised to know it was many?

FB45sil7

Taub - Cross

1 MR. GOLDSTEIN: Objection, your Honor.

2 THE COURT: Sustained.

3 A. It would not surprise me.

4 THE COURT: The objection was sustained.

5 Q. Okay. You're his friend, right?

6 A. I'm sorry?

7 Q. You are Mr. Silver's friend, aren't you?

8 A. We had a friendly relationship, yes.

9 Q. So you knew him to be out in the community to great extent,
10 correct?

11 A. Yes, I did.

12 Q. Particularly with Jewish causes, right?

13 A. That's true.

14 Q. But otherwise he was very generous and is very generous
15 with his time, correct?

16 A. I understand that to be correct.

17 Q. Now, the prosecutor asked you about this resolution that
18 you were presented with that night, in fact they put it up on
19 the screen and then we saw a framed version of it and it sits
20 in a handsome plaque on your wall?

21 A. Yes.

22 Q. And we saw the photographs of you and Mr. Silver together,
23 correct?

24 A. Yes.

25 Q. You were not trying to hide your relationship with

FB45sil7

Taub - Cross

1 Mr. Silver, were you?

2 A. No.

3 Q. In fact, being photographed at such a public event,
4 correct?

5 A. Correct.

6 Q. And, in addition to the resolution that you received,
7 Dr. Goldfarb received a resolution, didn't she?

8 A. Yes.

9 Q. And in addition to the resolution that you received and
10 Dr. Goldfarb received, Ms. Rotenstreich received a resolution,
11 didn't she?

12 A. I don't know but it may have happened. I don't know if she
13 did.

14 Q. So, it wasn't as if you were singled out -- I mean, as nice
15 as it is and I don't mean to diminish it, it is a very nice
16 award and one that you are worthy of receiving, but Mr. Silver
17 didn't single you out to bring it, correct?

18 A. No.

19 Q. But he is your friend so it made sense for to him come and
20 present it to you?

21 A. Yes.

22 Q. At the invitation of the American Cancer Society?

23 A. Yes.

24 Q. Are you aware -- and again, I don't mean to diminish your
25 award in the least, but are you aware that in May of 2011 Russ

FB45sil7

Taub - Cross

1 Crispell of Tonawanda, New York --

2 MR. GOLDSTEIN: Objection.

3 THE COURT: Let him finish the question.

4 Q. Russ Crispell, of Tonawanda, New York, received the same
5 resolution, not the same words, but for his induction into the
6 Buffalo Tennis Hall of Fame?

7 MR. GOLDSTEIN: Objection.

8 THE COURT: Overruled.

9 Do you know?

10 THE WITNESS: I just don't know that.

11 Q. Are you aware that in May of 2011, in addition to
12 yourselves, the people at the American Cancer Society that
13 night and Russ Crispell, that the Liberty Middle School 7th and
14 8th Grade Band and the Middle School Jazz Ensemble received the
15 same kind of resolution upon the occasion of their
16 participation in the Music in Our Schools Month on March 23rd
17 of 2011?

18 A. I did not know that.

19 Q. Okay.

20 And are you aware that Chautauqua County, upon the
21 occasion of celebrating its bi-centennial on February 9th,
22 2011, also got a resolution?

23 A. Again, I did not know that.

24 Q. I take it there was no gathering of the recipients of the
25 resolutions in the first quarter of 2011?

FB45sil7

Taub - Cross

1 A. Not that I know of.

2 Q. First half. Excuse me. All right.

3 Again, I don't mean to diminish the award, you are
4 very deserving.

5 A. That's okay.

6 Q. But are you aware that there is hundreds -- hundreds -- of
7 these resolutions that are passed for the Assembly for things
8 like that all the time?

9 A. I was not fully aware of it but it certainly is possible.

10 Q. Okay, and that also there is hundreds of resolutions passed
11 like that by the Senate? Are you aware?

12 A. Most likely.

13 Q. And I take it you would not send patients to
14 Weitz & Luxenberg in exchange for receiving a resolution?

15 A. It was nice to get the plaque.

16 Q. Not to get the plaque, okay.

17 Judge, it is 5:20, if this is a convenient point.

18 THE COURT: If this is a good stopping point, this is
19 a good stopping point.

20 Okay, ladies and gentlemen, we are going to stop for
21 the evening. I am going to ask juror no. 4 to stay in the jury
22 room so we can discuss the note that you sent me. Everybody
23 else, have a very good evening. Don't discuss the case, don't
24 read any press about the case, don't listen to any reports
25 about the case or watch any TV about the case. I need you to

FB45sil7

Taub - Cross

1 be here tomorrow morning at 9:15. Please, don't be late. You
2 were all great this morning. We need to keep moving with this
3 trial.

4 Have a good evening and see you all tomorrow.

5 A JUROR: You too.

6 A JUROR: Thank you. Good night.

7 (Continued on next page)

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FB45sil7

Taub - Cross

1 (Jury not present)

2 THE COURT: Okay. Please, be seated. Let's deal with
3 first things first, let's deal with juror no. 4 first so that
4 we can get her out of here.

5 What is the parties' position?

6 MS. COHEN: Your Honor, we haven't had a chance to
7 confer with defense counsel but I do think it requires more
8 follow-up questions from your Honor to determine if perhaps a
9 call to the employer will be helpful or harmful to her. I put
10 it to your Honor to sort of do that inquiry with her.

11 MR. MOLO: I agree for the main reason, Judge, that we
12 are on day two.

13 THE COURT: I am well aware.

14 MR. MOLO: The person a week from now who decides this
15 is no longer fun is going to come up with a similar excuse.
16 So, whatever -- but, that's your job.

17 THE COURT: It is impossible to believe that anyone
18 would, in a week from now, think that this is not fun.

19 Can you bring out juror no. 4?

20 (Juror 4 present)

21 THE COURT: Have a seat. We are going to follow up on
22 your note.

23 Remind me what you do and who you work for.

24 A JUROR: Okay, so I am the outreach coordinator and I
25 work for Care for the Homeless. So, I am the supervisor of

FB45sil7

Taub - Cross

1 three other members and we are also hiring more people to work
2 as a peer program. So, we work with people that are homeless
3 and we provide medical, dental, and health services in general.
4 I am the only person in my position right now.

5 THE COURT: So let me ask you something. You say you
6 are supervising three people?

7 A JUROR: Right now.

8 THE COURT: Right now.

9 Take the employ of those three who have been with you
10 the longest, how long has that person been with you?

11 A JUROR: Two years. The person is currently on
12 vacation, though.

13 THE COURT: When does he or she come back from
14 vacation?

15 A JUROR: Next week.

16 THE COURT: And how about the second person, second
17 longest?

18 A JUROR: One year.

19 THE COURT: Okay, and is he or she around or on
20 vacation?

21 A JUROR: Yes, she's around.

22 THE COURT: The last person?

23 A JUROR: Same thing, one year.

24 THE COURT: So, I understand that your boss thinks
25 that he or she needs you desperately back and I am sure that

FB45sil7

Taub - Cross

1 you are great at what you do. Do you think that either of
2 these people could sort of step into your position for a couple
3 of weeks while you are sitting on this trial?

4 A JUROR: When it comes to the service that I provide
5 at the clinics they're able to do it but the paperwork and
6 things like that, they're not able to do it because they don't
7 have the training for that.

8 THE COURT: So there is paperwork requirements that
9 you need to do?

10 A JUROR: Yes; and proposals to submit and things like
11 that to fix and change and implement programs.

12 THE COURT: So, I don't want to put you in a bad
13 position with your employer but what I would like to do is talk
14 to your boss to see if I can persuade your boss that they can
15 do without you for the period of this jury so that you can
16 continue to serve.

17 A JUROR: Okay.

18 THE COURT: Can you tell me your boss' name and phone
19 number?

20 A JUROR: Supervisor or assistant executive director?

21 THE COURT: Tell me who to call. Who told you they
22 need you back?

23 A JUROR: Oh, my direct supervisor. I don't have my
24 cell phone with me.

25 THE COURT: Okay.

FB45sil7

Taub - Cross

1 A JUROR: But I can give you the office number.

2 THE COURT: Okay.

3 A JUROR: That is 212-366-4459, and her name is
4 Lynette, L-Y-N-N-E-T-T-E, and last name Berges, B-E-R-G-E-S.

5 THE COURT: And who is above Ms. Berges?

6 THE JUROR: Her name is Vivian Fletcher-Blake.

7 THE COURT: Same number?

8 A JUROR: It will be the same number, you have to
9 transfer to the correct extension.

10 THE COURT: How late is the office open?

11 A JUROR: Until about 5:00.

12 THE COURT: So I'm going to need you to come back
13 tomorrow. We will deal with this tomorrow because it is 5:30
14 now so I'm probably not going to get anybody at your office.

15 A JUROR: Another thing?

16 THE COURT: Okay, another thing.

17 A JUROR: I spoke to her last night and this is what
18 she said to me. During the lunch break today I called HR and
19 they said they only pay me for 10 days out of this jury
20 process. After the 10 days, that's it. So, I would not
21 receive no payments after day number ten.

22 THE COURT: I am hearing you say that would be a
23 hardship?

24 A JUROR: Yes. It will be a hardship for me.

25 THE COURT: Okay. Let me ask you to wait in the jury

FB45sil7

Taub - Cross

1 room, okay?

2 A JUROR: Okay. No problem.

3 (Juror not present)

4 THE COURT: I would be prepared to harangue her boss
5 about the possibility to get along without her for six weeks,
6 but if she had told us from the get-go we would have excused
7 her on the ground of hardship. So, I am inclined to remove her
8 on the ground of hardship and put Alternate 1 in her seat.

9 MS. COHEN: The only thought I had, I'm not sure if it
10 is possible to ask her boss to pay beyond their policy but I'm
11 not sure that is something that your Honor can get into.

12 THE COURT: I am sure that is a fool's errand.

13 Mr. Molo?

14 MR. MOLO: We would like her to serve on the jury but
15 I understand, you can't --

16 THE COURT: There is no question that if we had heard
17 this during voir dire we would have excused her on that ground
18 of hardship and so I feel like I can't hold on to her under the
19 circumstances.

20 We have three alternates so it is going to be
21 difficult from here on out for anybody else to get off this
22 jury.

23 Bring her back out.

24 (Continued on next page)

FB4Ysil8

1 (Juror present)

2 THE COURT: We're going to excuse from this case. We
3 thank you for your service. You're now free to discuss the
4 case. Have a good night.

5 JUROR: Thank you very much.

6 THE COURT: Any issues beyond the nonpros agreement to
7 discuss?

8 MR. MOLO: I guess we probably should have cautioned
9 Dr. Taub about not -- obviously, the government is not going to
10 talk to him I take it.

11 THE COURT: If they do, you can cross-examine on it.
12 I am assuming that they are professional prosecutors and they
13 understand the risk of talking to their cooperator while he's
14 on cross. I usually do caution them.

15 MR. GOLDSTEIN: We will not be talking to Dr. Taub
16 while he's a witness.

17 THE COURT: Anything else?

18 MR. MOLO: Just the cooperation agreement.

19 THE COURT: Okay.

20 MS. COHEN: Your Honor, if the defense intends to use
21 exhibits tomorrow with Dr. Taub, if we could get a copy of the
22 exhibits.

23 THE COURT: Are there any other exhibits you plan to
24 introduce?

25 MR. MOLO: I don't know.

FB4Ysil8

1 THE COURT: It's the same answer as yesterday, it
2 depends. It depends on what he says. It would be nice,
3 however, to the extent you could create a list of all the
4 possible defense exhibits, and then there will be a defense
5 exhibit list, like the government exhibit list, I can just
6 check off.

7 MR. MOLO: Okay.

8 THE COURT: Do you want to be heard again on the
9 issue? Or are have you said everything you want to say on
10 whether you're entitled to the various versions -- and I think
11 there are two or three.

12 MR. GOLDSTEIN: It depends on if you consider the
13 email a version.

14 MR. MOLO: Just to be clear, it's the drafts that went
15 to Dr. Taub's lawyer.

16 THE COURT: A draft went to Dr. Taub's lawyer. It
17 looks like a mark-up came back, and then there was a final.

18 MR. MOLO: That's correct.

19 THE COURT: Is there a paragraph that differs from the
20 final that went in between?

21 MR. GOLDSTEIN: There was one other email.

22 THE COURT: Was it your edit? Or was it his lawyer's
23 edits? Was it from you to her or from her to you? It's her to
24 you.

25 MR. GOLDSTEIN: There was an initial version. Then

FB4Ysil8

1 there were edits that were communicated by telephone from
2 counsel to the government, and that's reflected in a mark-up
3 with the date of January 6, 2015, with a redaction in the
4 version that we gave you.

5 THE COURT: This document?

6 MR. GOLDSTEIN: That document.

7 THE COURT: So that's what was communicated orally?

8 MR. GOLDSTEIN: Orally by counsel from Dr. Taub to
9 counsel for the government.

10 THE COURT: And an AUSA was making the edits as they
11 were being communicated?

12 MR. GOLDSTEIN: Or there was a substantive discussion
13 followed by these edits being made.

14 THE COURT: Okay.

15 MR. GOLDSTEIN: After that, there was an email that
16 was sent from counsel for Dr. Taub on January 9, 2015, which
17 contained two paragraphs with suggested language that was
18 slightly different than that mark-up that we had discussed.

19 And then at the end, there is one more email about the
20 deletion of a single word, and then there's the file version.

21 THE COURT: Okay. I've got them all.

22 Do you want to say anything else?

23 MR. MOLO: We had an argument this morning.

24 THE COURT: I'm going to have an ex parte conversation
25 with the prosecutors because I want to understand a little

FB4Ysil8

1 better what they know about this in terms of what the witness
2 saw and what they saw.

3 MR. COHEN: Are you going to do that now?

4 THE COURT: That's my plan.

5 Do you all need a brief break? I need a brief break.

6 (Recess)

7 (Pages 471 -476 SEALED by order of the Court)

FB4Ysil8

1 (In open court)

2 THE COURT: Please be seated.

3 I've conferred with the government. The record is
4 sealed. The government is going to disclose the various drafts
5 of the nonpros agreement and the communications with Dr. Taub's
6 lawyer.

7 Anything further?

8 MS. COHEN: Yes, your Honor. Just for our planning
9 purposes, can we get a sense of how much more cross so we can
10 have witnesses ready.

11 THE COURT: How much more cross?

12 MR. MOLO: Gee, I don't know. A couple of hours I
13 think maybe, two or three hours.

14 THE COURT: It seems like you will probably need a
15 witness before lunch.

16 MS. COHEN: Okay, your Honor.

17 THE COURT: We may not get to it. I'm skeptical that
18 he's got three more hours of cross with all due respect. Maybe
19 you do.

20 (At the sidebar; discussion off the record)

21 THE COURT: Everybody have a good night.

22 MS. COHEN: Thank you, your Honor.

23 (Adjourned to November 5, 2015, at 9:15 a.m)

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

PERRY WEITZ

Direct By Ms. Cohen	202
-------------------------------	-----

Cross By Mr. Cohen	204
------------------------------	-----

Redirect By Ms. Cohen	227
---------------------------------	-----

Recross By Mr. Cohen	235
--------------------------------	-----

ROBERT TAUB

Direct By Mr. Goldstein	247
-----------------------------------	-----

Cross By Mr. Goldstein	417
----------------------------------	-----

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

S-6	239
---------------	-----

102, 107, 120	240
-------------------------	-----

S-1	244
---------------	-----

367-1, 368-1, 389-1, 389-2, and 389-3 . . .	244
---	-----

302	290
---------------	-----

107-1	294
-----------------	-----

303	303
---------------	-----

108-1	304
-----------------	-----

304	307
---------------	-----

320	312
---------------	-----

321	327
---------------	-----

368-2	334
-----------------	-----

129	336
---------------	-----

1	130	338
2	310	343
3	311	345
4	598	363
5	525-06	373
6	525-7	375
7	525-13	382
8	375, 376, 379, 380, 381, 382, 383 and	384
9	S-4	
10	375, 376, 379, 380, 381, 382, 383 and S-4 .	384
11	314	388
12	315	391
13	313	395
14	327	398
15	525-16	401
16	526	404
17	525-16	406
18	525-21	408
19	525-23	410
20	316	415

21

22

23

24

25

DEFENDANT EXHIBITS

Exhibit No.	Received
2	223
4	429
5	433
3	421